

1897
Revenue (~~23~~) Department.

PRESS SERIES.

G.O., No. 845

DATED 6-10-97

[Despatch Abstract.]

Prin to further amend Act of 1884
(a)

Referring to the Com. the judges
of the high court the draft
of —

BACK PAPERS.

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

FURTHER PAPERS.

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

NOTES CONNECTED WITH G.O., No. 845, REVENUE, DATED
6TH OCTOBER 1897.

[SUBJECT.—Amendment of Act II, of 1864 (M).]

READ—again G.O., No. 58, dated 7th January 1892.

Read—also Proceedings of the Board of Revenue (Land Revenue), No. 3180, dated 11th July 1896.

To Secretary—

In a case reported in I.L.R. XIII, Madras, page 477, the High Court laid down a ruling which was at variance with what was understood to be the law in regard to the sale of land for arrears of revenue. The Board was requested to state how the difficulty created by the ruling could best be met, and what alterations or amendments of Act II of 1864 (Madras) it considered to be desirable. The current read above is the Board's reply.

Before the High Court declared the law in 1890 the Government (influenced chiefly by Sir H. Stokes, so far as I can see from the papers put up) had believed that the law only allowed sale "free of encumbrances" of land in the patta on which arrears had accrued (G.O., No. 604, dated 28th August 1888). The Board, of whom Mr. Garstin was a member, had held the contrary view. Mr. Garstin retained that view when he became a member of Government in 1889. When the High Court declared the law, both Mr. Garstin and Sir H. Stokes thought it should be altered, and Sir H. Stokes was especially strong on the point, thinking it would be *criminal* to delay the alteration. It has been delayed now for 4½ years and I know of no evil that has resulted.

J. G[ROSE]

2. Section 2 of the Act states that "the land, the buildings upon it, and its products shall be regarded as the security of the public revenue", and section 42 that "all lands brought to sale on account of arrears of revenue shall be sold free of all encumbrances". These provisions were understood to mean that encumbrances on land were extinguished by a sale only when the arrear, for the recovery of which the sale was held, had accrued on the land sold. In other words, when a plot of land was sold for an arrear, which had accrued on some other plot, the sale was held to be subject to encumbrances. This view had to be somewhat modified in the case of two or more pieces of land held by the ryot under one and the same patta. As stated by the Board in its Proceedings printed in G.O., No. 1150, dated 8th September 1874, it is impossible, without a vast amount of extra labour, to open an account of payment for each field. Hence the revenue accounts of collection are kept with reference to all the lands held under one patta. When a portion of an instalment remains unpaid, it cannot be stated whether it has accrued on one field or another. The provision of section 42 of the Act was therefore held to be applicable to the sale of any field held under one patta for arrears accruing thereunder. This view was confirmed by the judgment of the High Court in I.L.R. VIII, Madras, page 130. The High Court observed: "The land in his sanad or patta is the security for the revenue due on *his land* and the kists are calculated on the whole land and not on each field. By accepting his sanad or patta he, in fact, pledges each and every field as security for the whole assessment and he cannot split the security any more than an ordinary mortgagor."

3. In 1890 the High Court laid down the ruling referred to in paragraph 1 of this note. The District Judge of Salem in a case which came up before him on appeal observed: "The Act does not give the defaulter the power to elect what portion of his land shall be held to be in arrear. Whether he has one patta or many, he has

a certain amount on the aggregate to pay to Government and if he falls into arrear, the Collector may say that he considers the arrear to be due from one piece of land in his holding as much as from another, though the defaulter may have absolutely paid up the dues on that patta for that particular piece of land." This view was approved by the High Court in second appeal. It observed: "No provision is made for the case of separate portion of a holding, on which arrears had not actually accrued, being sold subject to encumbrances, and the only procedure prescribed for sales for arrears of revenue is that contained in section 42, which enacts that the lands shall be sold free of all encumbrances. Then after referring to section 44, which permits the Collector to sell "the whole or any portion of the land of a defaulter", the High Court held that these words clearly meant "the whole or any portion of the holding of the defaulter and not merely the whole or any portion of the fraction of the holding on which the arrears have actually accrued", and that the term "land" in section 2 of the Act meant the lands of the holding and not the portion of land in respect of which the arrears accrued. The word "holding" appears to have been used in the above judgment in the sense of all the lands held by the defaulter whether comprised in one patta or not.

4. This judgment has thus removed the limitation that to extinguish encumbrances the land sold should be that on which the arrear had accrued, or that the land sold should be included in the patta under which the arrear had accrued. So long as sales of land are confined to the villages in which the arrears accrue, the judgment can do no harm. But there is nothing in it to show that the extinction of encumbrances is limited to lands lying in the same village, taluk or district in which the default occurs. Section 57 of the Act permits the sale of land in one district for the arrear accruing in another on the application of the Collector of the latter district. The judgment attaches to such sale the effect sanctioned by section 42 of the Act.

J. G[ROSE].

5. This interpretation of the law must open a wide door for fraud. Persons, who lend money on the security of land, and who will be injuriously affected by its sale for arrears of revenue, may pay the arrears themselves and prevent a sale (vide section 35 of the Act). To be in a position to do this, they must know that the mortgagor has made default and that the mortgaged lands are being attached. Now the processes against land authorized by the Act are, (1) a written demand (section 25); (2) notice of attachment (section 27); and (3) notice of sale (section 36, clause 2). The written demand is to be served "upon the defaulter", and there is no provision for its being sent to the mortgagee. Nor can such a provision be made, as, owing to the difficulty of ascertaining the names of all the mortgagees, the realization of the Government demand will be delayed. The notice of attachment is affixed to some conspicuous part of the land and is published in the District Gazette. The attachment is also notified by public

J.G.

Or hasn't got an agent there?

J.G.

By section 27 the fact of attachment must be notified in the District Gazette. Mortgagees ought to take in the District Gazettes of districts where they have land mortgaged to them. Section 38 might give relief if the notice of attachment were not so published

proclamation on the land. A mortgagee, who does not reside in the village in which the land attached is situated has thus to rely only on the publication of the notice of attachment in the District Gazette. The notice of sale is fixed up in the Collector's office, taluk cutcherry and the nearest police station and on the land to be sold. This is not likely to attract the mortgagee's attention.

—but this is not certain, as publishing notice of attachment might be held not to be an integral part of publishing the sale under section 36. Moreover only one month is given to allow the mortgagee to find out and to address the Collector.

A. T. ARUNDEL.

I question whether such grave consequences will follow.

A. T. ARUNDEL.

6. The Government therefore considered that the Act should be amended at once. Sir H. E. Stokes thought that the necessary amendment could be effected by the addition of a few words in two or three sections and that a redraft of the whole Act was unnecessary. It was pointed out in pages the note under G.O., No. 58, dated 7th January 1892, that the amendment was not such a simple matter as it appeared to be and that a considerable amount of redrafting was required. The question was therefore referred to the Board for report.

J. G[ROSE].

7. The following difficulties were pointed out in the note in amending section 42 only of the Act so as to provide that lands shall be sold free of encumbrances only when they are included in the patta under which the arrears have accrued:—

(i) "The cess payable to Government on account of water supplied for irrigation" is included in the definition of "public revenue" by section 1 of the Act. In the case of zamindari, inam and freehold lands, the land revenue being permanently fixed, the cess will not come under "land revenue" and the sale of land for its realization will not be free of encumbrances.

A.T.A.

The High Court have ruled (VII, I.L.R., Madras, page 434) that "revenue" means revenue due on the defaulter's land.

J.G.

Madras, 434, the High Court observed that the words within inverted commas like the expression "in like manner as for the recovery of arrears of land revenue" occurring in section 10 of the repealed Abkari Act (III of 1864) indicated only that the same procedure was to be followed, and not that the sale was free of encumbrances. But sales free of encumbrances cannot be avoided, as the cesses are entered in pattas and as accounts of collections are maintained only with reference to the total amount

A.T.A.

shown in such pattas. Separate accounts cannot be maintained for the cesses as they are amalgamated with land revenue for purposes of collection in ryotwar villages in order to minimise the work of village accountants, and as in some cases the cesses are included in the rates of assessment.

(iii) The item of revenue shown on the margin though entered in the patta as miscellaneous revenue, is not due on the lands held by the defaulter under the patta. Hence the sale of any of the patta lands for the realisation of such revenue should be subject to encumbrances, but as pointed out in clause (ii) above this result cannot be secured in practice.

Revenue on lands cultivated by a ryot without a patta including poramboke lands.
Why? The Act does not say the lands must be entered in a patta.

A.T.A.

(iv) The same remarks apply to other items of miscellaneous revenue, such as fishery and ferry rents, cost of demarcation stones, etc.

(v) In the case of lands included in a patta, on which a charge is made after the jamabandi, the charge, if unpaid, becomes an arrear; though not entered in the patta, it accrues on the lands held under it.

8. In the current read above the Board, after explaining the delay in submitting a reply to the Government reference, states that the question of amending the Act may lie over till an opportunity can be found for referring the decision in I.L.R., XIII, Madras, 477, for reconsideration by a Full Bench of the High Court. In the event of legislation being considered urgently called for, the Board would insert the following in section 42 of the Act after the words "free of

When G.O., No. 58, dated 7th January 1892, reached them, the Board remembered the consideration of Act II of 1864 which had taken place in 1887 and 1888 (in connection with Mr. Garstin's Bill) and knowing that there were some faults in it, resolved to remedy them all at the same time as they remedied it on the one point to which Government had called attention. A big office-note was then prepared. The Secretary, whose work was much in arrears, could not find time to look at that or the note about the Court of Wards' Bill which was in arrears at the same time. I, being a member then, took up the Court of Wards' Bill and finished with that. I was then going to take up the Bill for amending Act II of 1864, but was prevented by the order promoting me from the Board.

The word *patta* occurs nowhere in the Act. It could not be introduced without definition.

A.T.A.

all encumbrances," provided that the arrears have accrued under the patta or grant in which the lands are comprised.

In proceeding

against any immoveable property not included in the patta or grant, the right, title and interest of the defaulter only shall be sold."

9. The following are the objections to the proposed amendment:—

(i) It is not clear what is meant by the word "grant".

(ii) It is doubtful what is meant by the words "have accrued under the patta." They may mean that the arrear is of the amount or portion of the amount

entered in section II of the patta (*vide* form 11 in the Village Manual), or that the arrear is of the revenue due or a portion thereof on the lands specified in section I. Section II of the patta, as at present prepared, includes in the total demand shown therein certain items of revenue not due on the ryot's land, i.e., land held by him under the patta, and it appears inequitable to

Why?

A.T.A.

mortgagees to sell any patta lands free of encumbrances for the recovery of such items of revenue. Mortgagees know that the revenue due on the land mortgaged to them is a first charge on such land and make their advances with such knowledge.

They cannot, however, be expected to

anticipate that the creditor will cultivate other lands without acquiring a right over them and thereby impose a further first charge on their security.

The security of the revenue stands first.

A.T.A.

(iii) Mr. Galton suggested that the items of revenue to be declared a first charge on land should be (1) assessment, (2) water-cess, (3) land-cess and (4) village-cess, and this suggestion was accepted by Sir H. E. Stokes. If it meets with approval, the definition of "public revenue" in section I of the Act may be amended so as to include only those items. The words "have accrued under the patta or grant in which the lands are comprised" in the Board's proposed amendment may be replaced

The word *patta* is unknown to the Act.

A.T.A.

by "are arrears of revenue due on the lands included in the patta in which the lands sold are comprised."

(iv) The above amendment would necessitate the issue of separate pattas for certain items of miscellaneous revenue, i.e., for such of them as are not due on lands held under patta. The issue of such pattas and the opening of an additional column in all the collection accounts for the separate exhibition of such miscellaneous revenue would increase work. Sir H. E. Stokes was apparently prepared to accept this, but Mr. Garstin did not see why for the sake of a sentiment miscellaneous revenue should lose some of its security.

(v) Again, the Board's proposed amendment leaves out the case of zamindari and inam lands. Under the High Court's ruling, when a defaulter holds two zamindari estates or two inam villages or two minor inams, one of each class may be sold free of encumbrances for arrears due on the other. To prevent this the words "sanad, title-deed or" should be inserted before "patta".

10. A few other sections of the Act should be amended at the same time—

(i) *Section 1.*—The definition of "public revenue" should be amplified as follows. The word "public" may be omitted as not being used throughout the Act. "Revenue due on land" shall, for purposes of this Act, be taken to include the land-tax or assessment assessed on land, tax on trees when leviable as a substitute for, or in addition to, land assessment, cesses or other dues payable to Government on account of water supplied for irrigation, and all taxes or cesses lawfully imposed upon the annual rent value or assessment of land.

(ii) The words "for purposes of this Act" obviate the objection raised in the previous office-note and referred to in paragraph 7 (i). The demand of land revenue is no doubt permanently fixed in zamindari sanads, inam title-deeds, waste land and freehold title-deeds and permanent pattas. But for purposes of collection, the term "land revenue" may be defined to include this permanent demand and water-cess.

(iii) The definition includes under revenue due on land water-cess payable by the tenants of a zamindar or inamdar. Section 2 of the Act will then make the land irrigated by the tenants as security for the water-cess. An impression may be created that it can be sold free of encumbrances for the cess due by the tenant and much difficulty may result. It appears necessary therefore to exclude such water-cess from the definition by an explanation running somewhat as follows:—

Explanation 1.—The cess payable to Government by a tenant of a landholder other than a holder of land on ryotwar settlement, on account of water supplied for irrigation, is not "revenue due on land" as above defined.

As Government only recognizes a ryotwari landholder and not his tenants, the words "other than a holder of land on ryotwar settlement" have been added.

(iv) The tree-tax when leviable as a substitute for land assessment (paragraph 2 of Standing Order No. 5), or in addition to land assessment, is brought within the definition.

In cases in which tree-tax and land-tax are payable by different individuals, the land cannot be sold for arrears of tax on trees growing thereon. It is therefore necessary to add a further explanation to the definition as follows:—

Explanation 2.—Tree-tax payable by a person other than the holder of the land on which the trees stand does not come within the definition.

(v) The definition also includes land and village cesses, which cannot be separated from land revenue for collection purposes without involving a vast amount of trouble to village officers.

(vi) The items of revenue referred to in the two suggested explanations will be collected under section 52 of the Act.

11. *Section 2.*—In Indian Law Report VIII Madras, 130, the High Court, after reciting section 2 of the Act, observed "clearly something has to be supplied here. The land is the security for the revenue due on land only." The section may be made clearer by inserting the words "on such land" at the end, and the word "public" may be omitted.

12. *Section 3.*—This section directs that every landholder shall pay "the revenue due upon his land" on or before the day on which it falls due. According to the definition of "revenue due on land" as above suggested, and even under the Act as it stands, many items of miscellaneous revenue will be left out, as not being revenue due upon his land and it may be contended by a defaulter that there is no direction in the Act for their payment on any particular date. To remove this defect, the words "or due by him" should be inserted after the words "upon his land in the second line of the section".

13. *Section 25.*—Mr. Garstin proposed to insert the words "the nature of the claim" after the words "the estate or land in respect of which it is claimed".

14. *Section 52.*—As land and village cesses have been included under the definition of "revenue due on land", the words "and all cesses lawfully imposed on land" should be omitted. The word "land revenue" may be replaced by the words "revenue due on land" which is defined in section 1 of the Act.

15. As it is proposed in this note to exclude certain items of miscellaneous revenue from the definition of "revenue due on land", it is desirable to examine the several items in some detail. For this purpose the list printed at page 49 of the Board's Jamabandi Report for fasli 1295 is adopted. The list in later reports has been cut down gradually to 10 or 11 items by clubbing the unimportant ones under "others".

(i) The most important items are (1) jodi and quit-rent on minor inams and (40) charge for water on zamindari and inam lands. The former is revenue due on land, as jodi or quit-rent is only favourable assessment on the inam lands, and is realizable under the ordinary provisions of the Act. The latter comes under revenue due on land as this term is proposed to be defined, and is realizable as such, except when the charge for water is payable by a tenant. The reason for excluding the charge payable by the tenant from the definition was pointed out in paragraph 10, clause (iii) of this note. It is open to the Collector to proceed against the moveable property of the defaulting tenant, including crops on the land, which presumably belong to him. When efforts are being made to secure fixity of tenure to zamindari tenants, it is unlikely that the Government will regard with favour any proceedings for the sale of his occupancy right for the arrear. The tenant's arrear will be realized under section 52 of the Act.

(ii) Item 6, land cultivated, but not included in the jamabandi. This refers to the charge made on patta lands after the jamabandi, such as second-crop assessment or charge for the irrigation of dry lands. The charge is revenue due on land held by the landholder and is recoverable as such.

(iii) In the case of the marginally-noted items, the revenue is revenue due on land, which is occupied. The arrears of such revenue are realizable by the sale of the land free of encumbrances.

(iv) The items marginally noted appear to relate to lands to which the cultivators have no right, and on which

What does "occupied" mean?

A. T. A [RUNDEL].

4. Revenue from rented villages.
5. Revenue from amani do.

7. Revenue from lands cultivated without darkhast for which no pattas have been granted.
8. Revenue from concealed cultivation.
- 9, 15 & 17. Revenue from the cultivation of unclaimed, reverted (i.e., relinquished or resumed by Government) or sequestered inams.
10. Cultivation of poramboke lands.
- 18 & 19. Revenue from hill villages, or from the lands on the sides and slopes of hills.
20. Revenue from boundary lands in dispute.
30. Rents on islands situated in rivers.
29. Rents on padugai lands, i.e., lands near the margin of rivers.
- 32 & 33. Revenue from cultivation of jungle lands newly cleared by burning, and cultivation of dry lands (huckle cultivation) in South Canara.

(v) The four items noted on the margin will be revenue due on land when the land on which the trees stand is occupied, in which case the tax represents land assessment. When the land is not occupied, the rent is realizable under section 52 of the Act.

2. Tax on trees on unassessed waste lands;
14. Rent of gardens and topes.
- 25 & 26. Rent on palmyrah or fruit trees.

13. Grazing tax or grass rent.
22. Chank rent.
23. Chunam-shell rent.
24. Brick-kiln rent.
27. Rent on roots for dyeing cloth.
28. Do. on lime quarries.
31. Do. from the sale of durby grass.
45. Rattan and coray rent.

(vii) The remaining items do not generally require to be realized under the Act. Such, for instance, are items 34, 35, 36, 38, 39, 44, 46, 51 and 52. Item 3 should be recovered under the agreement by which the payment of a contribution was secured or by civil suits. The nature of items 43, 48 and 49 is not known. Item 47—process—fees is collected along with the arrear in connection with which process is issued, and does not require separate consideration.

16. From the foregoing analysis it will be observed that there is no great objection (1) to the definition of "revenue due on land" suggested in the note; (2) to the realization of revenue due on land, but not on any land held by the defaulter under any tenure, by the sale of his land subject to encumbrances; and (3) to the realization under section 52 of the Act of revenue now classed as miscellaneous revenue, but not coming within the definition of revenue due on land. Only two objections can be thought of. One is that the security for the revenue is to some extent diminished, but it is submitted that the present practice of selling land free of encumbrances in all cases is not equitable. The second is that separate columns will have to be opened in the village collection accounts, especially No. 14 ledger and 16 Demand, Collection and Balance account for revenue due on land held by the ryots and for other revenue. This additional trouble cannot, it is submitted, be avoided.

3. Cess for repair of tanks.
34. Commission on sale of distrained property.
35. Commission on private estates under Government management.
36. Revenue fines.
38. Savings and refunds.
39. Excess collection over the demand.
43. Russums collected from zamindars.
44. Sale-proceeds of Amindivi coir.
46. Do. of waste lands.
47. Revenue process-service fees.
48. Sist on seri lands not included in the dowlah of previous fastis.
49. Stala karnam's russums.
51. Revenue deposit forfeited.
52. Sale-proceeds of trees.

17. The Act is, no doubt, capable of being improved in several particulars; but it

As I have stated, I do not think there should be immediate legislation to meet the ruling that the lands of all a defaulter's patta are responsible for the arrears due on any one of them (except, perhaps, that the publication of the notice of sale in the *District Gazette* might be provided for); but I do think legislation is needed to meet the rulings that land can only be sold "free of encumbrances" for arrears of revenue due on land, and that the phrase in section 52, "in the same manner as arrears of land revenue," indicates only that the same procedure must be followed, so that land sold under that section and not sold on account of arrears of revenue due on land, is not sold free of encumbrances. I think this could be done by an amending Bill amending Act II of 1864 as follows:—

Section 1, paragraph 3, should run thus: "revenue due on land shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for, or in addition to, the land assessment, all cess is lawfully imposed on land, and loans made under the Agriculturists' Loans Act, 1884.

Provided that the cess payable to Government by a tenant of a land-holder other than a holder of land on ryotwar settlement on account of water supplied for irrigation; and tree-tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land."

Section 2 should run thus: "The land belonging to the person who is bound to pay the revenue due on land, the buildings upon it and its products shall be regarded as the security of the revenue due on land."

Section 3.—Insert "or otherwise" after "land", etc.

Section 42.—Insert "due on land" after "revenue."

Section 52 should run thus: All arrears of revenue, other than revenue due on land, may be recovered in the same manner, etc., etc.

Section 36 (): may also be altered so as to require that the notice of sale should be published in the *District Gazette*. One of the most important points in the Act which needs revision is that it does not provide for the collection of arrears which accrue between the dates of the sale notice and of the sale. This might now be remedied.

J.G.

the law as it now exists with regard to the freedom from all encumbrance of lands sold for arrears of revenue? It may be said that the mortgagee may safeguard

was thought desirable to confine the amendment to the difficulty raised by the judgment of the High Court, leaving its further revision to a future date.

18. If the suggestions made in the foregoing paragraphs be generally approved, the note may be forwarded for the remarks of the Board.

V.K.R.

7-9-96.

To the Hon'ble Mr. Grose, C.I.E.

" " " Bliss, C.I.E.

The Board's four years of excogitation have not produced much result. It seems to be taken for granted by the Board, as it is in the office-note, that the High Court decision that all lands sold for arrears of land revenue are sold free of all incumbrances is foreign to the intention of the Act. The legislative discussions, etc., prior to the passing of Act II of 1864 have not been put up, and I will not delay this file to call for them, but considering the austere views that were held thirty years ago on the priority of Government claims to everything else I should be surprised if there is on record anything to show that the High Court ruling is in any way at variance with the intention of the legislature. The fact that the word *patta* is nowhere used in the Act and that section 42 says "all lands brought to sale on account of arrears of revenue shall be sold free of all incumbrance" greatly strengthen this view. In the absence of any restriction in the law to lands in a patta the only alternative to the High Court view would be that each field or fraction of a field is liable for the arrears due on it only, and unless there were a separate patta for each field or fraction of a field this alternative could never be acted on in practise.

I do not think anything is to be gained by waiting as the Board proposes for a case to be put before a Full Bench of the High Court. Government must, it appears to me, decide a matter of principle. Is it desirable in consideration of the claims of mortgagees and of purchasers who have not had the lands they have bought, registered in their names, to alter

Nor do I. The ruling of the High Court is distinct, and I think it is right.

J.G.

The Board should be informed of the amendments considered necessary, and why they are so considered, and asked to report their opinion speedily, in order that the Bill providing for them may be amalgamated with Bill 3 of 1896, being a Bill to amend the Madras Revenue Recovery Act II of 1864, which is already before the Council and has been revised by a Select Committee.

J. G. [ROSE.]

21-9-96.

The High Court ruling is, in my view, not only according to what the law is, but according to what it ought to be. I have no objection to legislation in the other directions proposed by my Hon'ble Colleague, though it does not seem to me to be a pressing matter, and I do not think that it could possibly be tacked on to the Bill already before the Legislative Council.

J.G.

I should much like to know what has become of the Hon'ble Mr. Grose's minute as to the preparation of a Revenue Code.

H. W. B. [LISS.]

21-9-96.

The High Court decision was passed

I see Sir H. E. Stokes thinks the law was not so understood by Revenue officers previously. I believe it was so understood by the majority of them. It certainly was by me.

J.G.

Sir H. E. Stokes seems to have been wrong.

H.W.B.

If legislation should be shown to be

I agree.

J.G.

21-9-96.

have to be carefully thought out and accurately worded.

A. T. ARUNDEL.
12-9-96.

The Hon'ble Mr. BLISS, C.I.E.

Two questions arise in this matter—

All lands.

H.W.B.

Always.

H.W.B.

I am not clear after reading this note through several times what the Secretary is driving at or what my Honourable Colleague has decided should be done. I am not even sure whether the latter would reply as I have done to the two questions above. If he would, it seems to me that, apart from the small question

himself by refusing to advance money on land until it is registered in his name. This, of course, would make him quite secure, but then the mortgagor—unless the sum advanced equalled the full value of the land—would be put in a correspondingly dangerous position. Again the mortgagee might insist on a joint patta for the land in the names of himself and the mortgagor. This, however, would not save either of them from the danger of fraud by the other.

Before it is conceded that the law as it now stands and has been interpreted, should be altered, it is, I submit, necessary for Government to know that actual mischief is now being done, that fraud is actually being perpetrated on a considerable scale or that (as feared in the office note) the rate of interest demanded by money-lenders on landed security has risen owing to fear of fraud.

in 1890, and if Collectors are referred to the last six years ought to provide ground enough for legislation, provided the evils anticipated have actually taken place. The Board has already passed an executive order to restrict possible mischief. Another useful order would be to require all sales under section 36 to be advertised in the *District Gazette*.

necessary, it would be by restricting the freedom from encumbrance by sale to lands within the same patta when sold for arrears of land revenue. A short Act would be necessary, with definitions of land revenue, patta, etc., and it would

1. When an arrear of revenue accrues what lands of the defaulter can be sold in satisfaction of it?

2. When land is so sold when is it and should it be sold free of all encumbrances?

As to the first I have never heard it contended that the Collector cannot sell any piece of land registered in the name of a particular individual which he might choose for an arrear of revenue other than land revenue.

This certainly is a great objection.

J.G.

for other revenue. It was also objected that to confine sales under a land revenue patta free of encumbrances only to sale for revenue due on land would diminish the security for the land revenue. Both these objections can be met by the following simple expedient, viz., to insert a statutory direction at the end of section 42 to the effect that any payments made by a defaulter shall be credited first to revenue other than revenue due on land.

This is a good idea and should be carried out.

J.G.

If there be any arrear under a patta there must, under these circumstances, be an arrear of revenue due on land. Hence, as now, practically, all sales for arrears under a land revenue patta will be free of encumbrances and thus the security for the revenue will remain undiminished. To prevent any doubt on this point provision should be made that the sale notice must * contain a specific statement that the sale is free of, or subject to, encumbrances which statement may be made conclusive evidence of this fact; for, since its truth or falsehood will be apparent by mere inspection of the patta, no one would dare to state it falsely with a fraudulent intent, and if they did, it would invalidate the sale.

I don't quite follow this. If the law provides that the sale shall be free of encumbrances, a declaration of the fact in the sale-deed will not add force to that provision and vice versa.

J.G.

* What I meant when I used "must" was that, for the purposes of notice to purchasers, this was the only place in which the fact could be conveniently stated.

G.S.

29-10-96.

The Honourable Member wishes also that the Act should be amended so that it may be possible to recover the arrears which accrue due between the date of the sale notice and that at the sale. The High Court set aside the sale in the Shendamangalam case, because the arrears had never been demanded from the defaulter. Hence there seems to be doubt whether the arrears in question can be recovered. To meet this point I think it is necessary only to amend section 37 and section 42. In section 37 after the words "full amount of the arrears of revenue" the words "due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not" must be inserted. Section 42 should run as follows:—Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all encumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating any arrears due by the defaulter on the date of sale whether such arrears have been demanded under section 8 or section 25 or not, any interest due on such arrears, the expenses of attachment and sale, and any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by a defaulter prior to sale as well as any arrears realized by sale or, as above provided, after sale, shall be credited first on account of revenue other than revenue due on land and then to revenue due on land.

Approved.

J.G.

H.W.B.

revenue due on land and shall be sold free of all encumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating any arrears due by the defaulter on the date of sale whether such arrears have been demanded under section 8 or section 25 or not, any interest due on such arrears, the expenses of attachment and sale, and any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by a defaulter prior to sale as well as any

This section should be altered to this effect.

J. G[ROSE].

Yes.

J.G.

H. W. B[LISS].

I have called for the note referred to by the Hon'ble Mr. Grose from the Board of Revenue. When it is received I will submit it with a further note. Meanwhile, if the matter under discussion be disposed of, it will facilitate the earlier disposal of the whole matter.

J.G.

I submit that there is no need for one form of procedure for recovering land revenue and another for recovering the rent of a house belonging to Government or one for abkari and another for fishery rent or for the sale-proceeds of Government timber.

G.S.

I agree.

J.G.

A definition should be inserted to this effect.

J.G.

I cannot agree that Government should have the power to recover anything that is not "revenue", that is, moneys realized by virtue of the power which the State possesses as a State, should be recovered under the Act. If Government owns a house, it occupies in respect of that house the same position as all other owners of houses; and, if it lets its house, it should be left to recover the rent in the same way as other owners of houses do. Moneys realized as house-rent, sale of old materials, etc., are receipts, not revenue. So far as I know the numerous State Railways which exist can recover what is due to them only in the same way as Railways which are not State railways can. Why should Government as a house-owner be put in a different position from other house-owners, when it is not in a different position as an owner of railways?

On reconsideration I think it goes too far.

J.G.

28-11-96.

Act. If Government owns a house, it occupies in respect of that house the same position as all other owners of houses; and, if it lets its house, it should be left to recover the rent in the same way as other owners of houses do. Moneys realized as house-rent, sale of old materials, etc., are receipts, not revenue. So far as I know the numerous State Railways which exist can recover what is due to them only in the same way as Railways which are not State railways can. Why should Government as a house-owner be put in a different position from other house-owners, when it is not in a different position as an owner of railways?

H.W.B.
30-10-96.

Yes: the word "unless" might be taken to bar the collection under II of 1864 of any tax with regard to which any provision for recovery is made in another Act.

H.W.B.

in another Act.

J.G.

I am not aware of any inconvenience or loss which has been experienced for want of these definitions. Much better leave them alone.

H.W.B.
30-10-96.

Owing to the changes contemplated above, it seems necessary to define holding.

It should be defined, but the word "pattah" should not be used.

J.G.

The definitions should be arranged in proper order in section No. 1. Perhaps also the definition of an arrear should be put there.

G. STOKES.
29-10-96.

Note for the Secretary—

I submit as personally directed a proof-copy of such of the sections in Act II of 1864, which it is proposed to amend, and of the amended sections. The amendments already approved by the Honourable Member, are printed in ordinary type, and those suggested in the office-note in italics.

2. The Hon'ble Mr. Bliss approves the proposal to widen the definition of revenue, but it is not clear whether he accepts the definition proposed by the Secretary or by the Hon'ble Mr. Grose. The Hon'ble Mr. Grose first accepted the Secretary's definition, but on reconsideration he objected to it as going too far. I have adopted the Hon'ble Mr. Grose's definition.

3. The Hon'ble Mr. Bliss proposes to define "arrears" to save verbiage. The Hon'ble Mr. Grose considers this unnecessary. Pending further instructions in the matter, section 4 has been left unaltered. Orders are required as to whether section 59 of the Act, should not be amended owing to the doubt raised by certain decisions of the Madras High Court.

V.K.R.
2-4-97.

The Hon'ble Mr. Grose, C.I.E.—
The Hon'ble Mr. Bliss, C.I.E.—
[Amendment of Act II of 1864.]

The Board was called on to submit proposals for amending Act II of 1864, in consequence of the High Court ruling in Indian Law Reports XIII, Madras, page 477 and after several years they submitted the report called for. The High Court then not only held that lands under one patta may be sold for arrears due under another patta held by the same defaulter but also that by such sale the lands passed free of encumbrances. To embody and correct these rulings, on the last note on these papers, it has been agreed, accordingly, to amend sections 1, 2, 3, 37 in part, 42 and 52. In the proof of amendments annexed these approved amendments are shown in ordinary type.

2. The Hon'ble Mr. Bliss approves the proposal to widen the definition of "revenue", but it is not clear whether he accepts the definition proposed by the Secretary or by the Hon'ble Mr. Grose. The Hon'ble Mr. Grose first accepted the Secretary's definition, but on reconsideration he objected to it as going too far. I have adopted the Hon'ble Mr. Grose's definition.

3. The Hon'ble Mr. Bliss proposes to define "arrears" to save verbiage. The Hon'ble Mr. Grose considers this unnecessary. Pending further instructions in the matter, section 4 has been left unaltered.

4. In the notes on the above paper it came to notice that a note on the same subject had been prepared in the Board's office in which a number of amendments had been proposed. These amendments and the sections to which they relate are printed in italics in the annexed proof. Many call for no remark but in regard to some I have a few comments to make.

Section 24A.—"Judgment debtor" should be "defaulter".

Section 25.—I do not think the words "in the village in which the arrear fell due" should be added either to "abode" or "residence."

Section 36, clause 2.—I do not think it expedient to reduce the time of the notice.

Section 52.—I do not think it is expedient to omit from the section—

Advances.
Fees.
Cesses.

If "revenue" be not defined, it might be argued that these items did not fall within the scope of the Act.

Section 59.—Orders are solicited on the points raised under this section in the Board's note.

G. STOKES.
3-6-97.

The "proof," headed "Existing Act" and "Act as proposed", shows the amendments considered necessary by us in Act II of 1864 (underlined) and the amendments suggested in an office-note prepared in the Board's office five or six years ago (shown in italics). I remembered this note, and had it called for. As stated in

the note, Act II of 1864 has worked well enough for the last 33 years. It seems to me undesirable, therefore, to alter it more than is absolutely necessary. Most of the amendments suggested in the note do no more than make verbal improvements, impose on the Legislative what has been done by the executive, or settle points which have been doubted in times past, but have now been decided by the High Court in such a way that doubts can no longer arise about them. I do not propose to adopt such amendments, but there are a few which seem to me necessary and should find a place in our amending Bill. My remarks accordingly are entered in the "proof." My opinion as to whether the amendments are "necessary" "or unnecessary" are based on the reasons given in the Board's note.

J. G[ROSE].

On reconsideration I agree that the arrear ought to be defined as any revenue left unpaid on the dates it is due. See remarks on "proof."

J.G.
29-7-96.

See notes on proof.

H.W.B.

EXISTING ACT.

Section 1, paragraph 3.—Public revenue due on land shall, for the purposes of this Act, be taken to include, etc.

ACT AS PROPOSED.

Section 1, paragraph 3.—"Revenue due on land" shall, for the purposes of this Act, be taken to include land tax or assessment assessed on land¹ tax on trees which is levied as a substitute for or in addition to the land assessment, (all cesses or other dues payable to Government on account of water supplied for irrigation) all (other) cesses lawfully imposed on land and loans made under the Agriculturists' Loans Act, 1884.²

Why not say "Land Revenue", tout court.

H.W.B.
This phrase is used in sections 42 and 52 *infra*.

J.G.
17-8-97.

Very well.

H.W.B.
18-8-97.

I think "Revenue" should also be defined as any sum payable to Government under any enactment in force at the time.

On the whole, I think it will be dangerous to define "revenue".

J.G.
18-8-97.

¹ I would add water-rate.

J.G.

As to this, I prefer the existing law. I should put it as shown in brackets.

H.W.B.

I agree to this.

J.G.
18-8-97.

² I would say under the Land Improvements Act, 1883, and the Agriculturists' Loans Act of 1884.

J.G.
H.W.B.

3. Also the other "the" at 3.
H.W.B.

I have seen it. Looking at the definition of "estate," "holding," "occupant," "occupancy" &c., the laws to which the writer refers are doubtful, and in Bombay the law seems to be precisely as we wish it to be in Madras.

J.G.

I don't like this definition of "Holding". Who is to say that this or that person is "responsible for revenue". When we go into considerations of this kind, we deviate from what should be our one principle, namely, that the person to whom we look is the person who is required under Regulation XXVI of 1802. I should say "Holding" includes all immoveable property wherever situated entered in the Government accounts as held by one person singly or by two or more persons jointly", or to that effect.

This seems to be an improvement.

He is the person responsible.

I think the definition proposed by my Honourable Colleague is best.

Section 2.—The land, the buildings upon it, and its products, shall be regarded as the security of the public revenue.

Section 3.—Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land, on or before the day, etcetera.

Section 2.—The land, the buildings upon it, and its products, shall be regarded as the security of the revenue due on land.

Section 3.—Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land or otherwise, on or before the day, etcetera.

Section 4.—Should be omitted as I have said above.

J.G.

Provided that the cess payable to Government by tenant of a landholder other than a holder of land on Ryotwar Settlement on account of water supplied for irrigation; and tree-tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land.

"Holding" includes all the immoveable property held by one or more persons responsible for the revenue wherever found.

See also paragraph 16 of office note above.

G.S.

H.W.B.

J.G.
17-8-97.

J.G.
17-8-97.

J.G.
18-8-97.

If you omit section 4, you must insert a definition of some kind of "in arrear", and also, I think, of "defaulter", e.g., "revenue" is said to be in arrear when it has not been paid on or before the day appointed by the Collector for its payment. A "defaulter" means "a person who has failed so to pay revenue", or to that effect. I am not tied to any particular form of words.

H.W.B.

I have said that "arrear" must be defined. Wherever "defaulter" is used in the Act, it clearly means a man who has defaulted by not paying revenue due by him and I don't think it needs definition.

J.G.
17-8-97.

I do not know any other provision of law which makes it necessary to pay revenue.

J.G.
17-8-97.

Very well. Don't define "defaulter."

H.W.B.
20-8-97.

Section 5.—Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's moveable and immoveable property, or by execution against the person of the defaulter in manner hereinafter provided.

Section 5.—Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any* of the under-mentioned processes in manner hereinafter provided—

(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;
(b) by the attachment and sale of the defaulter's immoveable property;
(c) by attaching and taking under Government management the defaulter's immoveable property;
(d) by the arrest and imprisonment of the defaulter.

Section 6.—If the defaulter hold under a Sunnud-i-milkeut Istimrar or other similar instrument, the mode of recovering the arrear shall be in accordance with the terms of such sunnud. In the case of other defaulters, the Collector or other officer empowered by the Collector in that behalf, may, at his discretion proceed to realise the arrear by the sale of either the moveable or immoveable property of the defaulter or of both.

Section 6.—If the defaulter hold under a Sunnud-i-milkeut Istimrar or other similar instrument, the mode of recovering the arrear shall be in accordance with the terms of such sunnud. * * * *

Section 7.—Arrears of revenue shall bear interest at the rate of six per cent. per annum.

Section 7.—Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall

I prefer this revised. It will be a great convenience that the rate of interest shall be exactly 1 anna in the rupee per annum. I should add "In calculating interest all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

H.W.B.

This certainly will be an improvement, but it raises the rate of interest and may be opposed. Let it be adopted.

J.G.

17-8-97.

Section 8, clause 1.—The Collector or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter, a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrear fell due. The person employed to distrain, shall produce the writing which, if the arrear together with the batta due to him under section 53 be not at once paid, shall be his authority for making the distress, *et cetera*.

Section 8, clause 3.—When a defaulter may be absent, a copy of the writing with the endorsement shall be fixed or left at his usual place of residence, or on the premises where the property may have been distrained, before the expiration of the 3rd day, calculating from the day of the distress.

be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears.

Section 8, clause 1.—The Collector or other officer empowered by the Collector in that behalf shall furnish to the person employed to distrain the property of a defaulter, a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrear fell due. The person employed to distrain shall produce

Unnecessary.

J.G.
Would be an improvement, I think

H.W.B.

I do not object.

J.G.

17-8-97.

the writing which, if the arrear together with the batta due under section 53 be not at once paid, shall be his authority for making the distress, *et cetera*.

Section 8, clause 3.—When a defaulter may be absent, a copy of the writing

Unnecessary.

J.G.

H.W.B.

with the endorsement shall on the day on which the property may be distrained, be fixed or left at his usual place of residence, or on the premises where the property may have been distrained.

Section 8, clause 4.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in

Necessary.

J.G.

Good at all events.

H.W.B.

the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made by a written order prohibiting (a) in the case of the debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and

Why "the taluk (treasury)"? Better say "Government treasury".

H.W.B.

J.G.

17-8-97.

another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into the taluk *

* treasury?

J.G.

and such payment shall discharge him as effectually as payment to the party entitled to the same.

Section 8, clause 5.—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required.

Every such officer may from time to time pay into the taluk, the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter.

See above.

H.W.B.

J.G.

17-8-97.

Section 8, clause 6.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the Collector from whom the notice issued.

Section 8, clause 7.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled.

Section 8, clause 8.—Provided that the implements of husbandry and one pair of ploughing cattle for each cultivator shall not be liable to attachment.

Unnecessary.

J.G.

H.W.B.

Section 9.—When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into, to the satisfaction of the Collector or other officer empowered by the Collector in that behalf, the distrainer shall transmit an inventory of the property distrained to the nearest public officer empowered to sell distrained property under Act VII of 1839, in order that it may be publicly sold for the discharge of the arrear due with interest, batta, and cost of distraint.

Section 16.—Where a defaulter may make a fraudulent conveyance of property to prevent the distress of arrears, any Civil Court, *et cetera*.

Section 22.—The public officer empowered under Act VII of 1839 to sell distrained property shall cause to be affixed, *et cetera*.

Section 9.—Immediately after the distress, the distrainer shall transmit an inventory of the property distrained to the Tahsildar in order that it may be publicly sold for the discharge of the arrear due with interest, batta, and cost of distraint.

Section 16.—Where a defaulter may make a fraudulent conveyance of property to prevent its distress for arrears, any Civil Court, *et cetera*.

Section 22.—The Tahsildar shall cause to be affixed, *et cetera*.

Section 23, clause 2.—If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorize its sale through a broker at the market rate of the day.

Section 24-A.—When the property sold is any moveable property to which the judgment-debtor is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.

Section 24-B.—When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.

Section 24-C.—When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, or registering any transfer of the share in favour of.

Section 24-D.—If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.

Section 25.—Before a Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of a defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid. Such demand shall be served by delivering a copy to the defaulter or to some adult male member of his family at his usual place of abode, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

Section 26.—When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into to the satisfaction of the

Section 25.—Before a Collector or other officer empowered by the Collector in that behalf proceeds to attach the land of a defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time when the arrear fell due. Such demand shall be served by delivering a copy to the defaulter or to some adult male member of his family at his usual place of abode in the village in which the arrear fell due, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last known residence in the village in which the arrear fell due, or on some conspicuous part of the land about to be attached, or at the village chavadi or other recognised village meeting place.

Section 26.—When the amount due is not paid pursuant to the terms of the demand, the officer serving the demand shall

Collector or other officer empowered by the Collector in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

Section 27.—The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date therein mentioned, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land and by publication of the notice in the District Gazette.

Section 34.—All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due and interest thereon at the rate of six per cent. per annum, *et cetera*.

Section 36, clause 1.—The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector of the district in which the property is situated or other officer empowered by the Collector in that behalf. The time may be either previous to or after the expiration of the fasli year.

Section 36, clause 2.—The last sentence. This notice shall be fixed up one month at least before the sale in the Collector's office and in the taluk cutcherry in the nearest police station-house, and on some conspicuous part of the land.

Section 36, clause 4.—Where the purchaser may refuse or omit to deposit the said sum of money or to complete the payment of the remaining purchase-money, the property shall be resold at the expense and hazard of such purchaser, *et cetera*.

proceed to recover the arrear, by the attachment and sale of the defaulter's land in the following manner.

Section 27.—The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land and at the village chavadi or other recognised village meeting place. The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date to be notified for the sale, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land and at the village chavadi or other recognised village meeting place and by publication of the notice in the District Gazette.

Section 34.—All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due and interest thereon at the rate of six and a quarter per cent. per annum, *et cetera*.

Section 36, clause 1.—The sale shall be by public auction, but shall not take place before the expiration of a month from the date on which the notice of attachment was published in the District Gazette. The time and place, *et cetera*.

Section 36, clause 2.—The last sentence. This notice shall be fixed up a fortnight at least before the sale in the taluk cutcherry in the nearest police station-house on some conspicuous part of the land and at the village chavadi or other recognised village meeting place. The notice shall also be published in the District Gazette.

Section 36, clause 4.—Where the purchaser may refuse or omit to deposit the said sum of money or to complete the payment of the remaining purchase-money, the property may be resold at the expense and hazard of such purchaser, *et cetera*.

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the steps necessary for sale, and thereupon the sale shall be stayed.

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not, with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the necessary steps for sale, and thereupon the sale shall be stayed. At the end of the section add: *Explanation.*—The word "sale" in this section includes a resale.

Section 38, clause 6.—It shall be competent to the Collector of the district, either of his own motion or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer's order.

Section 38, clause 7.—In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or, in case of appeal under the preceding sub-section, by the District Collector.

Section 39.—When lands may be purchased at public sale, the Collector . . . shall publish . . . together with a declaration of the lawful succession of such purchaser to all the rights and property of the former landholder in the said lands.

Section 39.—When lands may be purchased at public sale, the Collector . . . shall publish . . . together with a declaration that such purchaser has purchased the said lands absolutely, i.e., free of all incumbrances, or that he has succeeded only to the interest of the defaulter in the said lands.

Section 42.—All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, and if any balance shall remain after liquidating the arrears with interest, and the expenses of attachment and sale, and other costs due in respect of such arrears, it shall be paid over to the defaulter, unless such payment be prohibited by the injunction of a court of competent jurisdiction.

Section 42.—Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating any arrears due by the defaulter on the date of sale, whether such arrears have

I don't understand. You don't realise arrears by sale, but sale proceeds and the words "or as above provided after sale" are unintelligible to me.

H.W.B.

The last words refer to payments of arrears accruing after the attachment of the land, which may be paid after the sale, but the section must be recast.

H.W.B.

J.G.

17-8-97.

*Section 45, clause 3.— * * * * **
Such landholders and karnams shall furnish the said accounts, when required, for a period of not less than three years next preceding the then current year * * *

*Section 52.—*All arrears of revenue other than land revenue due to Government all advances made by Government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in Revenue or Police duties, and all cesses lawfully imposed upon land, may be recovered in the same manner as arrears of land revenue under the provisions of this Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for.

been demanded under section 8 or section 25 or not, any interest due on such arrears, the expenses of attachment and sale, and any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by a defaulter prior to sale, as well as any arrears realised by sale or as above provided, after sale, shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.

*Section 42.—*Add the following explanation:—

Explanation.—"Incumbrances shall include mortgages and

Necessary.

ail charges on land or

J.G.

under-tenures which

H.W.B.

impair its value, and

all other rights derived from the defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

*Section 45, clause 3.— * * * * **

Necessary.

Such landholders and

J.G.

karnams shall

H.W.B.

furnish the said

accounts, when

required, for a period of not less than three years next preceding the year in which it is proposed to hold the sale.

*Section 52.—*All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed in Revenue or Police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for. The following explanation has to be added:—

H.W.B.

*Explanation.—*Receipts due to Government under special

Necessary.

contracts are not

J.G.

revenue within the

H.W.B.

meaning of this section.

Sales under this section shall be sales only of the right, title and interest of the defaulter.

J.G.

H.W.B.

18-8-97.

*Section 53.—*Persons employed in serving notices, or in other process under this Act, shall be entitled to batta at such rates as may from time to time be fixed by the Board of Revenue with the sanction of Government and published in the District Gazette.

*Section 53.—*For serving notices or other process under this Act, batta shall be re-

Unnecessary.

covered at such rates

J.G.

as may from time to

H.W.B.

time be fixed by the

Board of Revenue with the sanction of Government and published in the District Gazette.

*Section 58.—*No Court of Civil Judicature shall have authority to take into consideration or decide any question as to rate of land revenue payable to Government or as to the amount of assessment fixed or to be hereafter fixed on the portions of a divided estate.

Unnecessary if the addition I have newly proposed to the definition of land revenue is approved.

J.G.

*Section 58.—*No

Court of Civil Judi-

cature shall have

authority to take

into consideration or

decide any question

as to the liability of

land to pay revenue

including second-crop

assessment, or as to

the rate of assessment

on land, or of second-

crop charge payable

to Government, or as

to the amount of

assessment fixed, or

to be hereafter fixed,

on the portions of a

divided estate.

I don't think this will do. Suppose a man says "I have paid for the redemption of the land revenue" and Government says "you have not," is not the court to decide? I should have thought that the question of "the liability of land to pay revenue, (an awkward expression, for the land does not pay) is the very question which the courts ought to have power to decide. I have always understood that they have that power now—why should it be taken away?"

H.W.B.

I agree that civil courts should not be barred as regards question of liability of land to pay revenue, though I see in section 158 of the Punjab Land Revenue Act 1887 (the last of the Land Revenue Codes), civil courts are barred as regards "any claim to hold free of revenue any land, mills, fisheries, or natural products of land or water." I think it will be best if section 58 follows section 153 of the Punjab Code as regards 4 of the matters referred to in it thus:

No Court of civil Judicature shall have jurisdiction in any matter which the Local Government or any revenue officer is empowered by this Act to dispose of, or take cognizance of the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under this Act; in and particular.

2. A civil court shall not exercise jurisdiction over any of the following matter, namely :—

(i) The amount of land revenue assessed on any estate or charged in respect of any holding.

(ii) The amount of any other revenue or any cess charge or rate assessed on an estate or holding under any enactment for the time being in force.

(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue.

(iv) The amount of any fees, fines, costs or other charges imposed under this Act.

J.G.

Are any fees or fines imposed "under this Act"? I doubt. However, let us see a clean proof of the whole thing. We can then reconsider this and any other doubtful points there may be.

H.W.B.
20-8-97.

The Act does not impose them, but they are demanded under this Act, so the word "demanded" should be substituted for "imposed."

J.G.
20-9-97.

Vide—page 14.

Section 59.—In the Board's note it is suggested that this section prescribes a limitation only in the case of grievances caused by proceedings "taken under this Act", and that it may not be held to apply to proceedings thought to have been taken under the Act, but which the Act did not really authorize. The Secretary solicits orders. I do not think any alteration need be made.

J.G.
29-7-97.

H.W.B.
16-8-97.

Supplementary Memorandum with regard to section 58.

Under section 38 of Madras Act II of 1864 application may be made to a Collector to set aside a sale on account of material irregularity or mistake which has caused substantial injury. Under section 58 Civil Courts are barred as regards any question relating to the rates of revenue imposed on land.

2. The decisions of the High Court as regards these matters are—

I.L.R., 1 Mad., 69. The High Court has jurisdiction in original suits against revenue officers for Acts *ultra vires*, though the said officers have supposed them to be authorised.

I.L.R., 12 Mad., 105. If the mode of redressing an injury is pointed out by a Statute, the ordinary jurisdiction of the Civil Courts is ousted as regards it.

2 Mad., 167. The Civil Courts may try suits as regards liability to revenue assessed.

3. Apparently therefore the Courts have no jurisdiction with regard to mistakes or irregularities in the sale, or the rate of assessment imposed on land; but they have jurisdiction with regard to liability to pay revenue and with regard to things done *ultra vires* though they purport to be done under the Act.

4. It is even doubtful whether Courts under the present law can cancel sales on account of fraud. I propose to give them this power expressly. I also propose to bar jurisdiction with regard to "other revenue" in the same way as it is barred with regard to revenue due on land.

J. G[ROSE].
20-8-97.

Hon'ble Mr. Grose, C.I.E.—

Hon'ble Sir H. Bliss, K.C.I.E.—

Amendment of Act II of 1864.

As directed by the Honourable Sir H. Bliss, a clean proof of the Act with the amendments ordered by Honourable Members is submitted for orders.

G. STOKES.
10-9-97.

EXISTING ACT.

Section 1, paragraph 3.—Public revenue due on land shall, for the purposes of this Act, be taken to include cesses or other dues payable to Government on account of water supplied for irrigation.

ACT AS PROPOSED.

"Revenue due on land" shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists' Loans Act, 1884.

Provided that the cess payable to Government by a tenant of a landholder other than a holder of land on ryotwar settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land.

EXISTING ACT.

Section 2.—The land, the buildings upon it, and its products, shall be regarded as the security of the public revenue.

Section 3.—Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land, on or before the day, *et cetera*.

Section 4.—

Section 5.—Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's moveable and immoveable property, or by execution against the person of the defaulter in manner hereinafter provided.

ACT AS PROPOSED.

"Holding" includes all immoveable property wherever situated entered in the Government accounts as held by one person singly or by two or more persons jointly. Revenue is said to be "in arrear" when it has not been paid on or before the day appointed [by the Collector] for its payment.

The words "by the Collector" must be omitted for the kist dates of land revenue are fixed by Government.

G.S.
6-9-97.

J.G.
H.W.B.

The land belonging to the person who is bound to pay the revenue due on land, the buildings upon it and its products, shall be regarded as the security of the revenue due on land.

This section, should, I submit run as follows:—

"Where land is in the holding of any person it, the buildings upon it, and its products, shall be regarded as the security for the revenue due on land payable by him."

G.S.
6-9-97.

I should put section 2 as follows:—

"All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

H.W.B.
J.G.

Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land, or otherwise, on or before the day, *et cetera*.

Section 4 of existing Act to be omitted. Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulters' moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

EXISTING ACT.

Section 7.—Arrears of revenue shall bear interest at the rate of six per cent. per annum.

ACT AS PROPOSED.

(c) by attaching and taking under Government management the defaulter's immoveable property;

(d) by the arrest and imprisonment of the defaulter.

Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general

I believe this is already the law in Bombay. The Bombay Act might be looked up and the same wording be adopted, if it is so.	or special order the interest due in respect of any arrears. In calculating interest all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna.
--	--

H.W.B.

Section 8.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made by a written order prohibiting—(a) in the case of the debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government Treasury and such payment shall discharge him as effectually as payment to the party entitled to the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required.

Every such officer may from time to time pay into a Government Treasury the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter.

If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the Collector from whom the notice issued.

If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled.

If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorize its sale through a broker at the market rate of the day.

Section 24-A.—When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.

24-B.—When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.

24-C.—When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to or registering any transfer of the share in favour of any person except the purchaser.

24-D.—If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company

is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made, or document executed as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.

Section 34.—All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due and interest thereon at the rate of six-and-a-quarter per cent. per annum, *et cetera*.

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the steps necessary for sale, and thereupon the sale shall be stayed.

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not, with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the necessary steps for sale, and thereupon the sale shall be stayed. At the end of the section add: *Explanation.*—The word "sale" in this section includes a resale.

J.G.
H.B.

The Honourable Member objects because it has been held that "sale" includes "resale" and hence the explanation is he thinks, unnecessary.

G.S.
6-9-97.

It will do good and not harm to insert it.

J.G.
H.B.

(6) It shall be competent to the District Collector either of his own motion or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer's order.

(7) In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or in case of appeal under the preceding sub-section, by the District Collector.

Section 42.—All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, and if any balance shall remain after liquidating the arrears with interest, and the expenses of attachment and sale, and other costs due in respect of such arrears, it shall be paid over to the defaulter, unless such payment be prohibited by the injunction of a court of competent jurisdiction.

Section 42.—Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all encumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise the sale-proceeds shall be applied to liquidating (1) any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale and all arrears adjusted as above provided from the sale-proceeds of attached property.

This will be clearer, if broken up by numbering.

H.B.
J.G.

tion 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale and all arrears adjusted as above provided from the sale-proceeds of attached property.

This will do, I think.
J.G.

I would alter as shown in italics.

H.B.
J.G.

arrears adjusted as above provided from the sale-proceeds of attached property.

Explanation.—“Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value, and all other rights derived from the defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest.”

Section 45, clause 3.—Such landholders and karnams shall furnish the said accounts, when required, for a period of not less than three years next preceding the then current year . . .

Section 52.—All arrears of revenue other than land revenue due to Government, all advances made by Government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in Revenue or Police duties, and all cesses lawfully imposed upon land, may be recovered in the same manner as arrears

Section 45, clause 3.—Such landholders and karnams shall furnish the said accounts, when required, for a period of not less than three years next preceding the year in which it is proposed to hold the sale.

Section 52.—All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on Revenue or Police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for.

of land revenue under the provisions of this Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for.

Explanation.—Receipts due to Government under special contracts are not revenue within the meaning of this section.

Sales under this section shall be sales only of the right, title and interest of the defaulter.

Section 53.—No Court of Civil Judicature shall have authority to take into consideration or decide any question as to rate of land revenue payable to Government or to the amount of assessment fixed or to be hereafter fixed on the portions of a divided estate.

Section 53.—No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under this Act; and in particular—

2. A Civil Court shall not exercise jurisdiction over any of the following matters, namely,

(i) the amount of land revenue assessed on any estate or charged in respect of any holding;

(ii) the amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;

(iii) any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;

(iv) the amount of any fees, fines, costs or other charges demanded under this Act.

G.S.
10-9-97.

J.G.
20-9-97.

H.B.
20-9-97.

An amending Act should now be prepared in due form and sent to the Board of Revenue, the High Court and the Advocate-General for observation.

J. G. [ROSE].
20-9-97.

In sending it, explain where the last section is taken from.

H. W. B. [LISS].
20-9-97.
J.G.

Draft so.

G.S.
22-9-97.

To Secretary—

Please see draft below.

A.K.
6-10-97.

Issue.

G.S.
6-10-97.

[Issued as G.O., No. 845, Revenue, dated 6th October 1897.]

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

Consent Number 5084
16 JUL 96

The Secretary to Government Revenue
Department.

Recd 16.7.96. E.2

Pro.No.3180 Mis
Dated 11th July 1896.

Subject.

Reporting to Government that the Board
un-
considers it-necessary to make any
immediate change in the Revenue
Recovery act for the purpose of meet-
ing the difficulty created by the
decision in I.L.R. 13 Madras 477
-9 and at the same time suggesting
the alterations to be made in Sec-
tion 42 of the act in case Govern-
ment is of opinion that legislation
is required.

5084

In the Court of the District Munsiff of Krishnagheri
The Twenty first day of July one thousand eight
hundred and eighty seven.

Present: - Mr. P. R. S. S. Krishna Sivaswami.
District Munsiff.

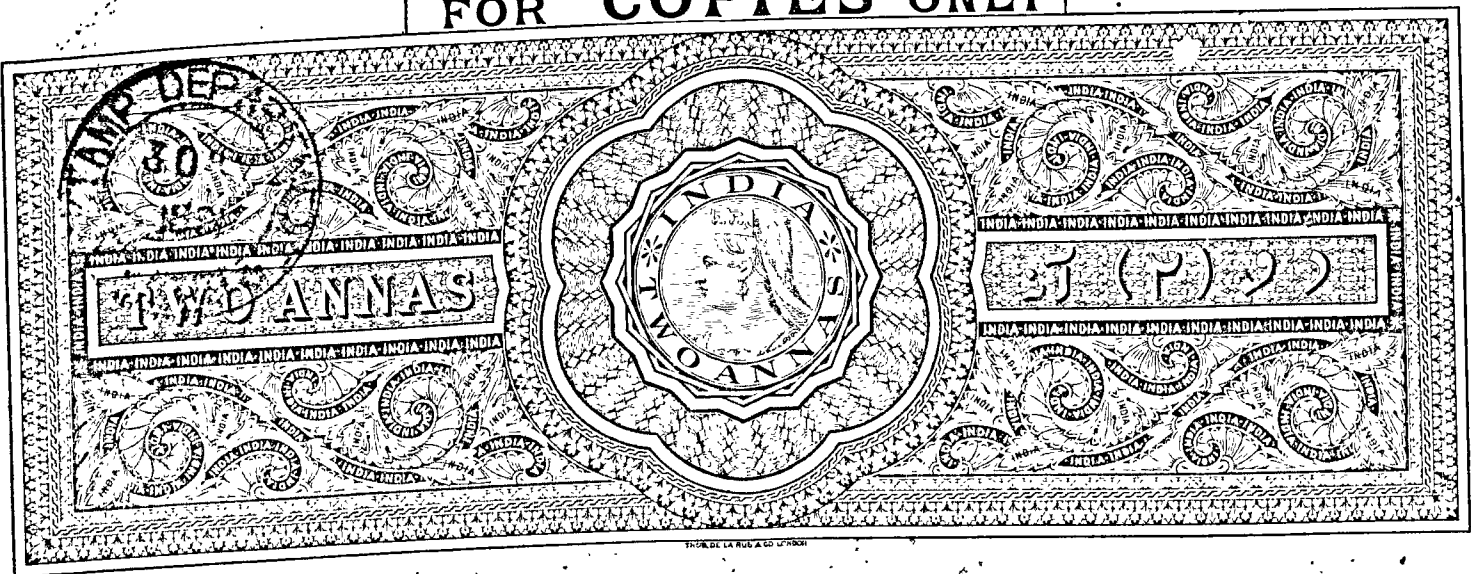
Original suit no 123 of 1887.

Sama char. ——— Plaintiff
Shreeminara Rao. ——— Defendant.

This original suit coming on for hearing,
the Court delivered the following.

Judgment: - The plaintiff sets forth that the plaintiff
land belonged to and was in possession of one
Krishnachari; that the same was hypothecated
to plaintiff by him on the 20 February 1877; that
the plaintiff instituted suit no 157 of 1879 on the
file of the late Dharmapuri District Munsiff Court;
that in execution of the decree he obtained therein,
the land was sold and that the plaintiff became
purchaser thereof on the 11 August 1885; that the plaintiff
was put in possession of the same by process of
Court; that the defendant put in objection
petition stating that he had purchased the plaintiff
land from Venkataramamian who purchased the
same at the Revenue sale under Act II of 1864 for

FOR COPIES ONLY



By 1575
30-7-31
Muzilpur
B. B. B. B.

arrears of revenue due to Government by the said
Prishnagar, in respect of some other land and that
the Court allowed his ^{petition} ~~possession~~ and
ordered ^{to quit possession} ~~the plaintiff~~ ^{him} therefore ^{the plaintiff} ~~was~~ ^{is} to establish
his right to and recovery of the plain land and
for moneys profits.

2. The defendant admitting the facts alleged
by the plaintiff contends that his right being
under the purchase at the Revenue sale the plaintiff's
right cannot prevail against him.

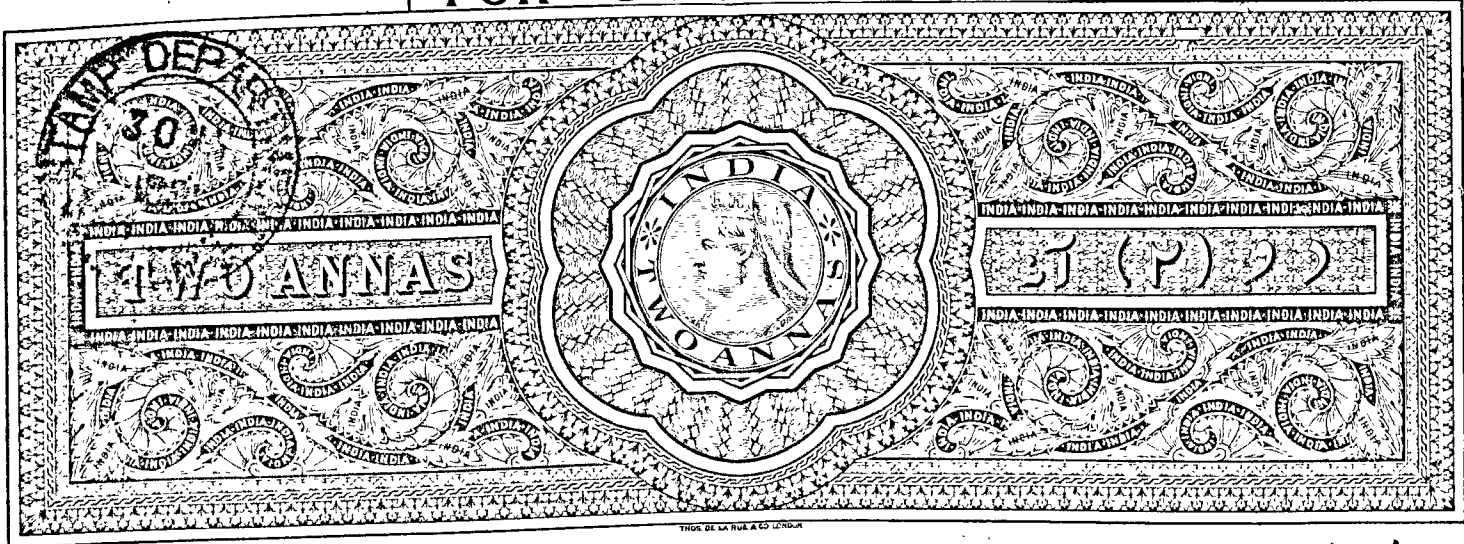
3. The following issues were framed.

1. Is the right of the plaintiff to the land in
question good and valid as against that
of the defendant.

4. Both parties rely on the records in execution
petition No 144 of 1886 in O S No 157 of 1879 on the
file of the late Bharampuri Court. They adduce
no other evidence.

5. The defendant relies upon the wording
of section 42 of Act II of 1864. It runs thus. "All
land brought to sale on account of arrears of
revenue shall be sold free of all incumbrances.
If the sale was on account of the arrears of
Government revenue due in respect of the land

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Q3 1576

30-7-31

By *[Signature]*
[Signature]
[Signature]

sold I will have no hesitation in holding that all prior incumbrances must yield to the Revenue sale. In this case it is admittedly sold on account of arrears due by the landholder in respect of some other land. In *Abdul Gani. vs. Krishnaji Bhikaji* (page 416 Volume I Bombay High Court Reports.) it was held that as the land revenue is the permanent charge on the land whoever derives his title from the occupant takes it subject to that charge and that therefore the purchaser at the sale is entitled to the land free from the mortgage lien. In page 419 of the same volume. *Gunda Shidhusheder. vs. Marden Sahib*, it was held that the Government revenue is a paramount charge on the land and it adheres to the land and to every portion of it independently of the hands into which it passes. It is clear that these decisions refer to cases of land sold for arrears due in respect of the same land. To ascertain whether the words "all land" in section 42 include also land sold

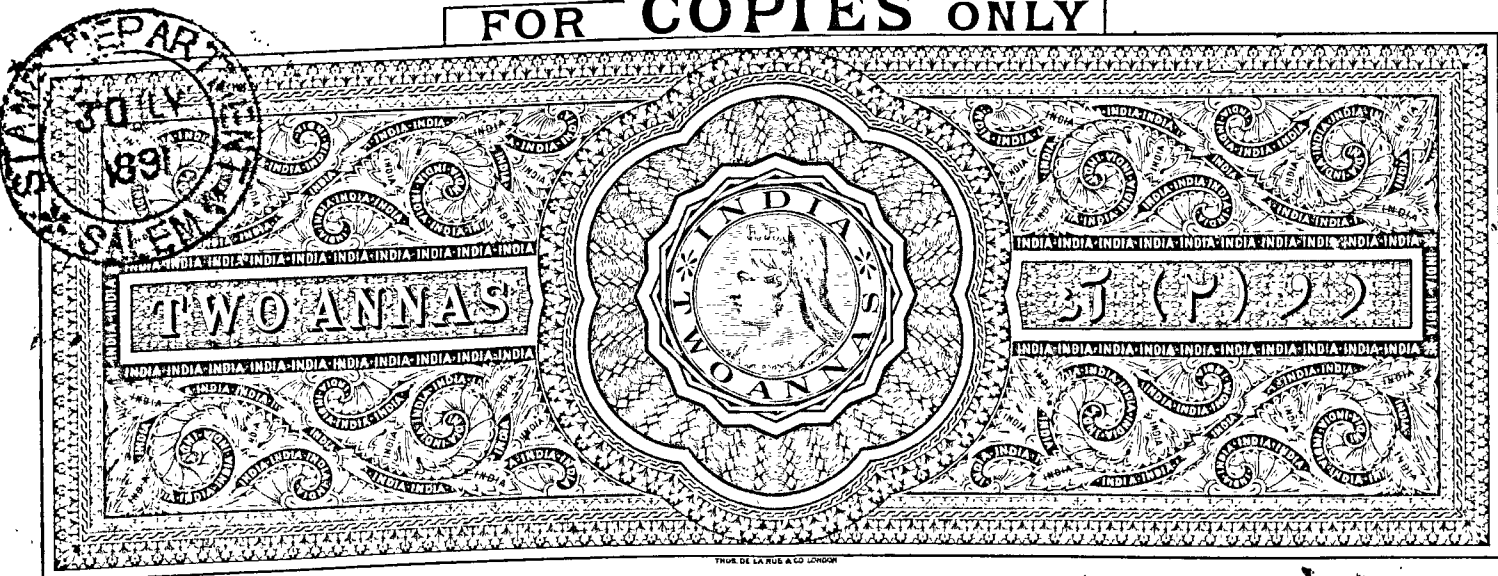
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171

3rd March

4th March

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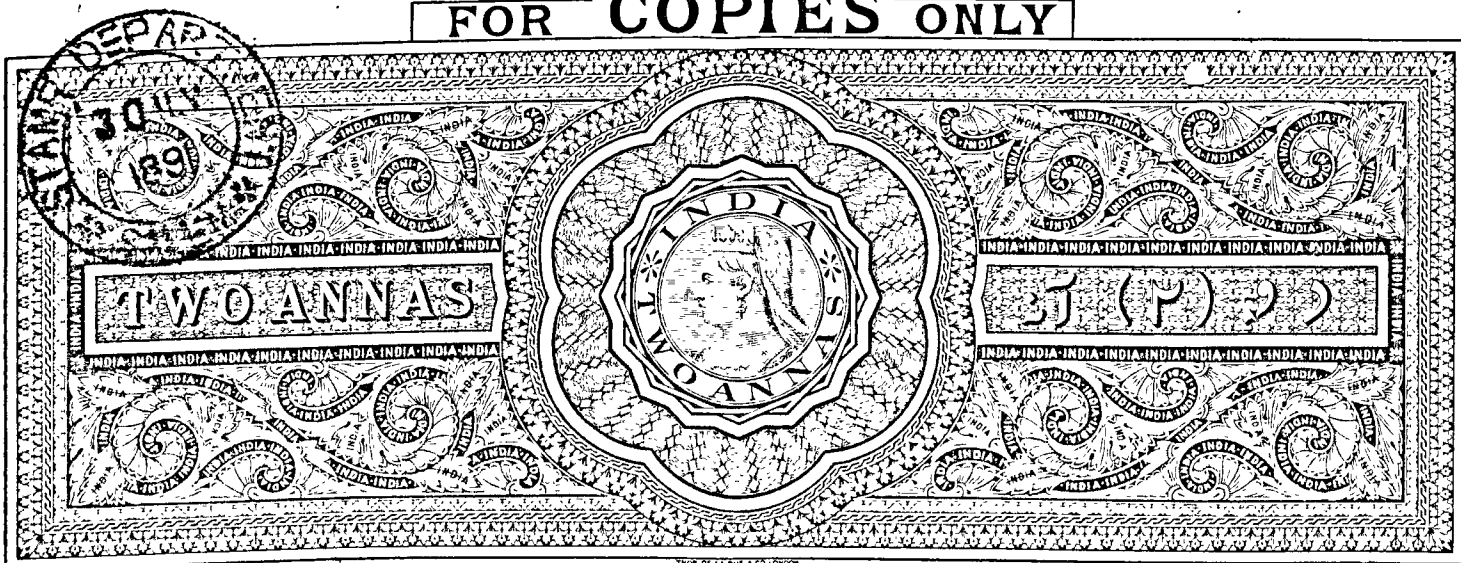
15-83

30-7-81

your agent in
M. P. L. G. H.
C. R. B. & Co.

for arrears of revenue dues on other lands the intention of the Legislature has been collected as may be evident from the other parts of the same Act and from the reason of the rule.

b. It is the land which is considered as security for the Public Revenue is defined in section 2 of the same Act. The land, the buildings upon it and its products shall be regarded as the security of the Public Revenue. Section 5 provides that it shall be lawful for the collector or to proceed to recover the arrears or by the sale of the defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided. In section 42 the words "All lands" are used and not all immovable properties. So by ^{reading} ~~regarding~~ all the 3 sections together, I come to this conclusion - Section 5 declares that all properties of a defaulter may be made available to make good the arrears of revenue. But the Revenue forms a charge only on the land as defined in the



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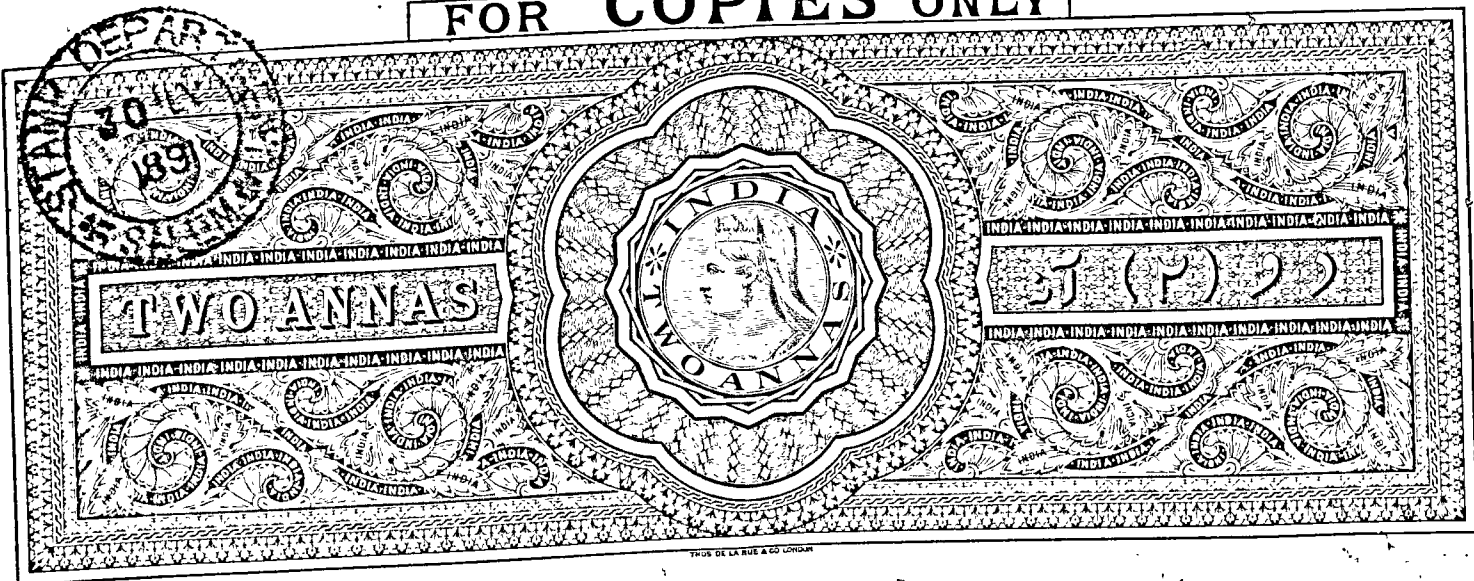
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you are required to
 Mr. J. L. G. G.
 in Rangoon

products of the ground attached in the possession
 of the defaulter, whether founded upon a previous
 sale, mortgage or otherwise shall not ^{be} ~~be~~ ^{bar} ~~the~~ prior
 claims of revenue due from the ground upon
 which such crop or product may have been grown.

This reservation and other provisions contained
 in the previous portion of this section show that
 other persons' rights in other movable properties
~~are~~ ^{are} ~~not~~ ^{are} intended to be defeated. If this be the
 case with reference to movable properties —
 how much care would have been taken by
 the Legislature to lay down any rule affecting
 immovable property and especially where the
 interests of others may suffer in certain precise
 and unambiguous terms. Otherwise it follows
 that a man who has taken a mortgage of
 another's land in Benares will have to watch
 all the movements of his debtor and his heirs
 as his right may be defeated at any moment —
 after any length of time by the mortgagor or his
 heirs obtaining any land near Cape Comorin and
 letting revenue due to Government on that land
 in arrears. I think this could not have been
 the intention of the Legislature. I therefore

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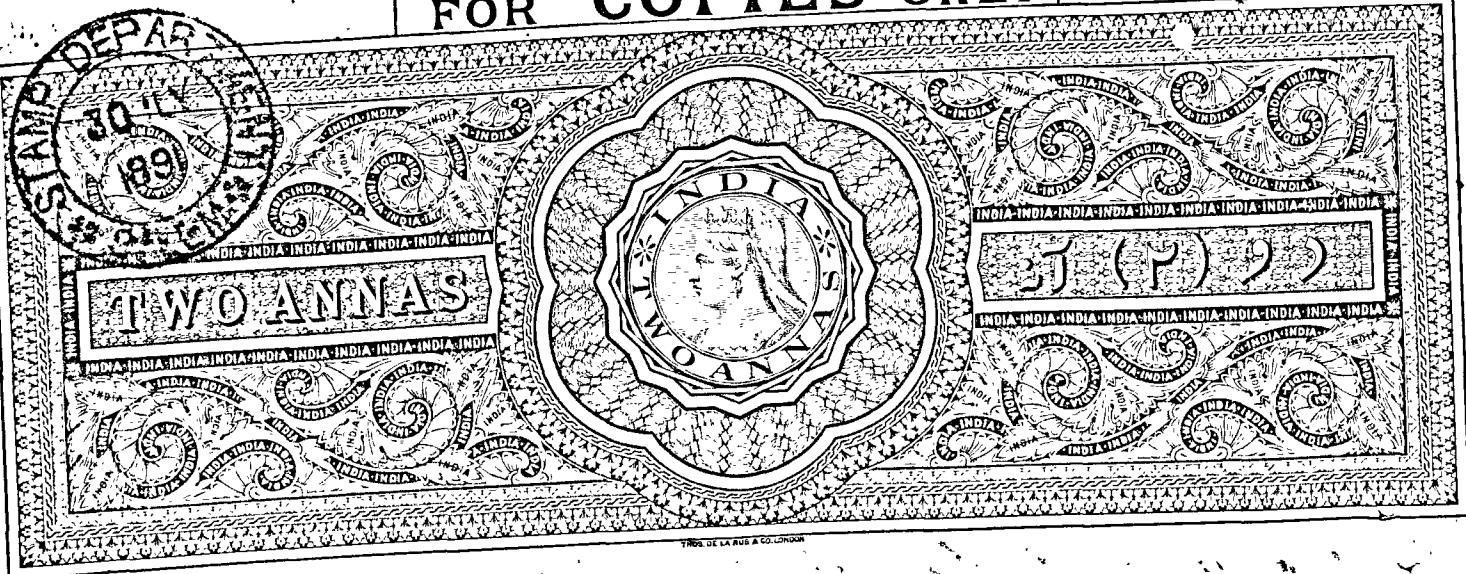
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of revenue in the
Munshiganj
by Anni Carter

Come to the conclusion that the Revenue sale
relied on by the defendant has not defeated
and cannot hold good against the prior incum-
brance of the plaintiff. Though the point of limitation
was ~~not raised~~ ^{if raised} by defendant still it may perhaps
be contended that the plaintiff has not brought
this suit within one year under article 12. b. II &
Schedule Act. IV of 1877. If my previous finding
is correct then it follows that the Revenue
authorities sold ~~only~~ ^{if} only the right of redemption
to which the defaulter is entitled and did not
purport to sell the plaintiff's right under the
mortgage. The plaintiff states that he knows
nothing about it till defendant set up the claim
in the execution proceedings above referred to.
Moreover the plaintiff does not pray for setting aside
the revenue sale. I am therefore of opinion
that the suit is not barred.

I therefore give judgment for plaintiff for
the recovery of the plain land and Rupees 4 for
mesne profits and also subsequent mesne
profits from the date of plain till date of
delivery of possession to plaintiff which will
be ascertained at the time of execution. The
7th Decr

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By 15-88

30-7-91

7 nannozum in Chas
Munshapur
49 Akbar Chas

defendant will also pay plaintiff his costs of
this suit - signed / J. S. Krishna Rao
District Munsiff

Plaintiff filed no exhibits
Defendant filed the following exhibits
No. I. Authenticated Copy of petition and orders
in Execution P. No 144 of 1885 connected with
O. No 157 of 1894 on the file of the late Bharam
puri Munsiff's Court - dated 30 March 1886.

II. Sale certificate granted to Venkata -
ramaneni by the Sub. Collector of Salem
dated 14 May 1880

Both parties examined now witnesses

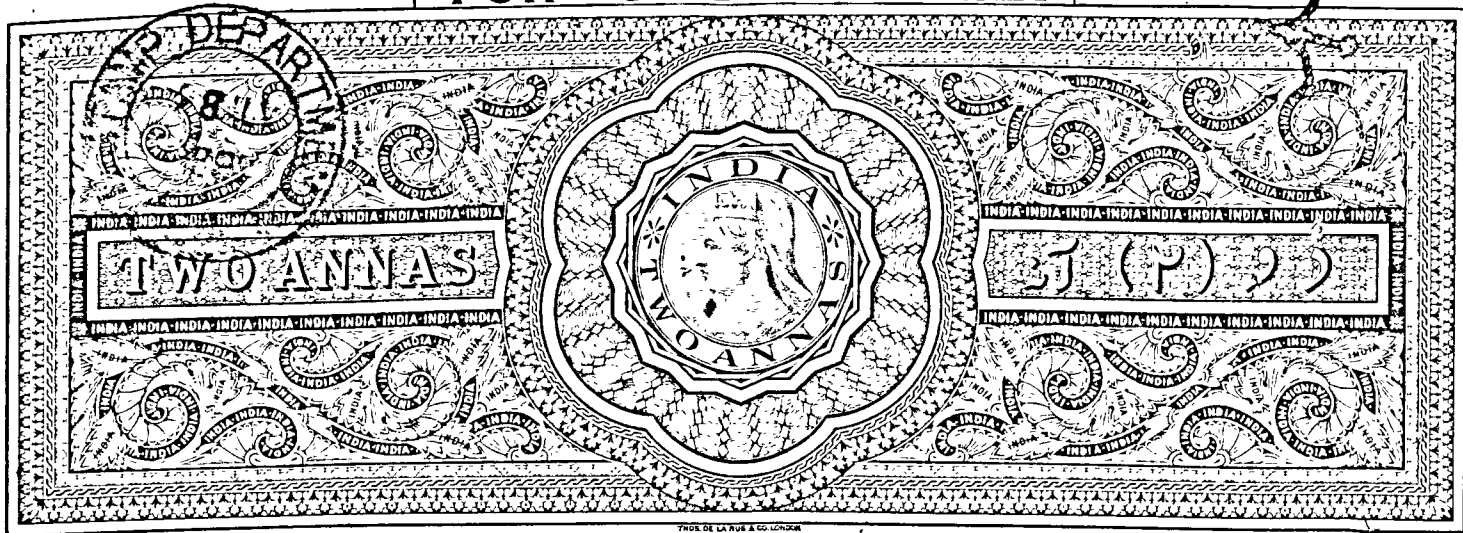
(Signed) J. S. Krishna Rao
District Munsiff

/s/ S. Krishna Rao
18/8/1891

Examiner

at
90
C. S.

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301

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on 7/91

on 1/91

1273 — 131

A No 246

original suit no 123/87
Judgment

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SUPPLEMENT

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In the District Court of Salem
The 25th day of February 1889.

Present:— C. R. Martin, Esq. J.
Appeal suit no 246 of 1887.

Pallikondai Sreenivas Rao. Defendant. Appellant.
Samachar — Plaintiff Respondent.

Appeal against the decree of the Court of the District Munsiff of Krishna giri, in original suit no 123 of 1887, dated 21st July 1887.

This Appeal coming on for hearing, the Court delivered the following

judgment:— The issue framed is:—

1. Is the right of the Plaintiff to the land in question good and valid as against that of the Defendant?

2. The District Munsiff found it to be so and gave a decree for the Plaintiff as claimed.

3. The grounds of Appeal are:—

I. Plaintiff's suit is barred by time as it is not brought within 1 year from the Revenue sale in question.

II. Section 42 of Act II of 1866 has been misconstrued. It is not laid down that that section applies only to cases where lands are sold for arrears due to them.

III. The intent and scope of the Act has been misunderstood.

4. According to the finding of the District Munsiff, the Plaintiff is entitled to the land.

Qz 1571

80-7-91

Yours truly
Wm. H. Smith
J. R. & Co.

Revenue sale does not entitle the purchaser to the land, because the arrears did not accrue on the land which was sold, and he has given a decree by which the subsequent purchaser at a Court sale takes the land absolutely though at the time of the Revenue sale he only had a mortgage lien on it.

5. It holds that the purchasers at the Revenue sale only purchased the defaulter's equity of redemption.

6. I cannot follow the reasoning of the District
Munaff in this case in face of the provision in
section 46 of the Act, which in the plainest terms
makes it lawful for the Collector to sell the
whole or any portion of the land of a defaulter
in discharge of an arrear of Revenue.

7 The words immovable property section 5 refers to immovable property other than land and includes houses etc. not standing on land subject to the payment of revenue. The Act does not give the defaulter the power to elect what portion of his land shall be held to be in arrear. Whether he has one patta or many, he has a certain amount on the aggregate to

28 March

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spannender Charakter

might gain

9. R. R. C. C. C.

therefore due as much from one land, in
his holding as from another and that under
the Act, it was a sale free of all encumbrance.

10 The District Court is in error and the Plaintiff's suit is dismissed with costs.

(Signed) W. D. D. Martin.

District Judge

Truro
Hilary

Examine

53
C.F.

Read Government Order, Revenue Department, No. 58, dated 7th
January 1892.

In replying to the Government Order read above, the Board begs in the first place to express its great regret at the long delay which has occurred. It was at first proposed to take advantage of the opportunity offered by the suggested amendment of Section 42 of Act II of 1864 to pass in review the various defects in other portions of the Act which the experience of more than a quarter of a century had brought to notice, and to this end a full office-note was prepared dealing with a considerable mass of correspondence. The subject then resolved itself into a revision of the whole act and was perforce put on one side until the press of ordinary work should give time for due consideration of a matter of such magnitude. The fact that the Government had merely called for suggestions upon one point was afterwards lost sight of and the papers remained on the arrears list. The Board is bound to admit that the above explanation does not fully account for a delay of over four years, and can only reiterate its regret that any delay should have occurred.

2. The Board is not prepared to advocate any immediate change in the law as now defined in Section 42 of Act II of 1864. It appears best to wait until an opportunity occurs, and has been taken advantage of, to get the question under reference remitted to a Full Bench of the High Court for reconsideration. The Board will take the necessary action as soon as a suitable case is brought to notice.

3. As a general rule all lands held by a single individual

Revenue (1896) Department.

CURRENT No. 702



From *the Board of Revenue
(Land Revenue)
Madras*

No. 2767 Routine

Dated 9th October 1896.

Received 13.10.96

Registered 14.10.96

Enclosures 1450.

Spare copies

SUBJECT.

*Submitting to Government
the Spec. vol. on the amend-
ment of Madras Act-II of
1864 referred to in P.O.
3180 dated 11-7-96 and spare copies
of the Board's Proceedings
quoted therein.*

7/11/96

or by a joint body of individuals in one village are included in a single patta, and in its Proceedings No. 127, dated 2-5-95, para 6, the Board has ordered that in case of default the lands of defaulters situated in the village in which the arrear has accrued should be proceeded against before any attempt is made to recover the arrears by taking action against property situated elsewhere. The Board believes that even before the issue of the above order, sales were generally confined to lands held under the pattas to which the arrears related and that in the few cases in which applications were sent to other taluks or districts the arrears were recovered as soon as notice No. 1

was issued. Lands held by a defaulter in another village of the same taluk may have been sold for arrears which did not actually accrue upon them, but such sales in villages outside the taluk must have been very few in number. It is to be regretted that statistics upon these points were not called for at the time, for the Board has now to rest its arguments mainly upon conjecture, and in view of the great delay that has already occurred, it is unwilling to await the collection of the necessary figures before submitting its reply to Government. The information will now be called for if Government so directs.

4. In the event of the Government being of opinion that legislation is required, the following alterations to section 42 of the act are suggested:-

(1) After the words "free of all encumbrances" add the following:-

"provided that the arrears have accrued under the patta or grant in which the lands are comprised. In proceeding against any immoveable property not included in the patta or grant, the right, title and interest of the defaulter only shall be sold"

(2) The word "and" which follows the expression "free of all encumbrances" shall be omitted.

(True Extract)

Reelean

Ag. Secretary.

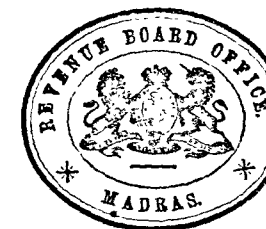
Order

BACK PAPERS.

G.O.	No.	Department.	Date.
51	43	R	10/10/96

FURTHER PAPERS.

G.O.	No.	Department.	Date.



Proceedings of the Board of Revenue (Land Revenue).

No 2767 Routine, dated 9th October 1896.

Read Official Memorandum from Government, Revenue Department,
dated 1st October 1896, No. 145.

Resolution.

In accordance with Official Memorandum No.
145. dated the 1st instant, the Board submits the papers in
question.

(True Extract)

Adelwamban

ASST. SECRETARY,
10 OCT 96 For Ag: Secretary.

To the Secretary to Government, Revenue Department,

with an Office note & spare copies of Board's Proceedings.

C. B.

(FOR ORDERS)

C.No.5084 of '96.

Amendment of the REVENUE
RECOVERY ACT,

II of 1864.

The Hon'ble Mr. GROSE, C.I.E.
Ne Hmawalle no. Pili, C.I.E.

A

BILL

FURTHER TO

Amend Madras Act II of 1864.

WHEREAS it is expedient further to amend Madras Act II of 1864; It is hereby enacted as follows:—

1. This Act may be called the "Madras Revenue Recovery Act Amendment Act," 1897, and it shall come into force on such date as the Governor in Council may, by notification, direct.

2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.

3. Section 4 is hereby repealed.

4. (1) For the third paragraph of section 1, the following shall be substituted:—

" 'Revenue due on land' shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists' Loans Act, 1884.

" Provided that the cess payable to Government by a tenant of a landholder other than a landholder of land on ryotwar settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand, shall not be considered as revenue due on land."

(2) In the same section, the following shall be added as the fourth and fifth paragraphs:—

" 'Holding' includes all immovable property wherever situated entered in the Government accounts as held by one person singly or by two or more persons jointly."

"Revenue is said to be 'in arrear' when it has not been paid on or before the day appointed for its payment."

5. For section 2, shall be substituted the following section:—

"2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

6. In section 3, for the words "the revenue due upon his land" shall be substituted the words "the revenue, due upon his land, or otherwise."

7. For section 5, shall be substituted the following section:—

"5. Whenever revenue may be in arrear it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

(c) by attaching and taking under Government management the defaulter's immoveable property;

(d) by the arrest and imprisonment of the defaulter."

8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six *and a quarter* per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

9. (1) From clause 1 of section 8, the words "to him" shall be omitted.

(2) To the same section, the following shall be added as clauses 4, 5, 6 and 7:—

"Fourth.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made

by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from ~~it giving~~ over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

"*Fifth.*—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required."

"Every such officer may from time to time pay into a Government treasury the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter."

"*Sixth.*—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Collector from whom the notice issued."

"*Seventh.*—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled."

10. In section 16, for the words "to prevent the distress of arrears" shall be substituted the words "to prevent its distress for arrears".

11. To section 23, shall be added the following clause:—

“If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorise its sale through a broker at the market rate of the day.”

12. After section 24, shall be inserted the following sections:—

“24-A. When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.”

“24-B. When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.”

“24-C. When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to or registering any transfer of the share in favour of any person except the purchaser.”

“24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.”

13. In section 34, between the word “six” and “per cent.,” shall be inserted the words “and a quarter”.

14. (1) In section 37, after the words “to tender the full amount of the arrears of revenue” shall be inserted the words

PR

" due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not".

(2) To the same section, shall be added the following explanation :—

" *Explanation.*—The word ' sale ' in this section includes a re-sale."

15. To section 38, shall be added the following clauses :—

^) " (6) It shall be competent to the District Collector either of his own motion, or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within ^{thirty} ~~30~~ days from the date of the Divisional officer's order".

" (7) In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or in case of appeal under the preceding sub-section, by the District Collector."

16. For section 42, shall be substituted the following section :—

a/ " 42. Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and, shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating (1) any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of the court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale, and all arrears adjusted as above provided from the sale-proceeds of attached property shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land."

" *Explanation.*—Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value and all other rights derived from the defaulter or his predecessors in interest"

but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

17. In clause 3, section 45, for the words "then current year" shall be substituted the words "year in which it is proposed to hold the sale".

18. For section 52, shall be substituted the following section:—

"52. All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on revenue or police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for."

"*Explanation.*—Receipts due to Government under special contracts are not revenue within the meaning of this section."

"Sales under this section shall be sales only of the right, title and interest of the defaulter."

19. For section 58, shall be substituted the following section:—

"58. (1) No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any Revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any Revenue Officer exercises any powers vested in it or him by or under this Act; and in particular—

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:—

(i) The amount of land revenue assessed on any estate or charged in respect of any holding;

(ii) The amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;

(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;

(iv) The amount of any fees, fines, costs or other charges demanded under this Act."

Read again G.O.No.58 dated 7-1-92.

" also G.No. 5084

FOR ORDERS.

In a case reported in I.L.R.xiii Madras page 477, the High Court laid down a ruling which was at variance with what was understood to be the law in regard to the sale of land for arrears of revenue. The Board was requested to state how the difficulty created by the ruling could best be met, and what alterations or amendments of Act II of 1864 (Madras) it considered to be desirable. The current read above is the Board's reply.

2. Section 2 of the Act states that "the land, the buildings upon it, and its products shall be regarded as the security of the public revenue", and sec.42 that "all lands brought to sale on account of arrears of revenue shall be sold free of all encumbrances". These provisions were understood to mean that encumbrances on land were extinguished by a sale only when the arrear, for the recovery of which the sale was held, had accrued on the land sold. In other words, when a plot of land was sold for an arrear, which had accrued on some other plot, the sale was held to be subject to encumbrances.

This

Before the High Court decided the law in ¹⁸⁹⁰ ~~1889~~ the Govt (influenced chiefly by Sir H Stokes, so far as I can see from the papers put up) had believed that the law only allowed sale free of encumbrances of land in the future on which arrears had accrued (G.O. 604 - not in the file) 28.8.88. The Bd, of whom Mr. Garstin was a member, had held the contrary view. Mr. Garstin maintained that view when he became a member of Govt in 1889. When the High Court decided the law, both Mr. Garstin & Sir H. Stokes thought it should be altered, & Sir H. Stokes was especially strong on the point, thinking it would be criminal to delay the alteration. It has been delayed now for 4 1/2 years, & I know of no evil that has resulted.

25

This view had to be somewhat modified in the case of two or more pieces of land held by the ryot under one and the same patta. As stated by the Board in its Proceedings printed in G.O. No. 1150 dated 8-9-74, it is impossible, without a vast amount of extra labour, to open an account of payment ^{for} of each field. Hence the revenue accounts of collection are kept with reference to all the lands held under one patta. When a portion of an instalment remains unpaid, it cannot be stated whether it has accrued on one field or another. The provision of sec. 42 of the Act was therefore held to be applicable to the sale of any field held under one patta for arrears accruing thereunder. This view was confirmed by the Judgment of the High Court in I.L.R. viii Madras page 130. The High Court observed "The land in his sanad or patta is the security for the revenue due on his land and the kists are calculated on the whole land and not on each field. By accepting his sanad or patta he in fact pledges each and every field as security for the whole assessment and he cannot split the security any more than an ordinary mortgagor".

3. In 1890 the High Court laid down the ruling referred to in para 1 of this note. The District Judge of Salem in a case which came up before him on appeal observed "The Act does not give

the

the defaulter the power to elect what portion of his land shall be held to be in arrear. Whether he has one patta or many, he has a certain amount on the aggregate to pay to Govt. and if he falls into arrear, the Collector may say that he considers the arrear to be due from one piece of land in his holding as much as from another, though the defaulter may have absolutely paid up the dues on that patta for that particular piece of land". This view was approved by the High Court in second appeal. It observed "No provision is made for the case of separate portion of a holding, on which arrears had not actually accrued, being sold subject to encumbrances, and the only procedure prescribed for sales for arrears of revenue is that contained in sec. 42, which enacts that the lands shall be sold free of all encumbrances. Then after referring to sec. 44, which permits Collector to sell "the whole or any portion of the land of a defaulter", the High Court held that these words clearly meant "the whole or any portion of the holding of the defaulter and not merely the whole or any portion of the fraction of the holding on which the arrears have actually accrued", and that the term "land" in sec. 2 of the Act meant the lands of the holding and not the portion of land in respect of which the arrears accrued. The word "holding" appears to

have

interest

have been used in the above judgment in the sense of all the lands held by the defaulter whether comprised in one patta or not.

4. This Judgment has thus removed the limitation that to extinguish encumbrances the land sold should be that on which the arrear had accrued, or that the land sold should be included in the patta under which the arrear had accrued. So long as sales of land are confined to the villages, in which the arrears accrue, the Judgment can do no harm. But there is nothing in it that the to show extinction of encumbrances is limited to lands lying in the same village, taluk or district in which the default occurs. Section 27 of the Act permits the sale of land in one district for the arrear accruing in another on the application of the collector of the latter district. The Judgment attaches to such sale the effect sanctioned by section 42 of the Act.

5. This interpretation of the law must open a wide door for fraud. Persons, who lend money on the security of land, and who will be injuriously affected by its sale for arrears of revenue, may pay the arrears themselves and prevent a sale. (Vide Sec. 35 of the Act). To be in a position to do this, they must know that the mortgagor has made default and that the mortgaged lands are being attached. Now the processes against land authorized

by

So far as the Defaulter himself is concerned it does no injustice. He holds all his lands on the condition that he may sell any part of it, or any other property of his if he fails to pay up all his revenue.

I don't think it opens the door much wider. The mortgagee of a piece of land may be expected to take in the Gazette of the District in which it is situated. He will then know of its attachment as the land now stands. An execution order may be issued but the notice of sale also shall be published in the Gazette. The mortgagor can then prevent the sale under Sec 35. Since the

amount of the arrears may exceed the value of the land, but this may be the case even if the law is altered.

Jg

Or he may put an agent there

Jg

~~the mortgagor is not~~
~~responsible for the~~
~~notice of attachment~~
~~in the District Gazette~~
~~and the sale~~

By Sec 27 the fact of attachment must be notified in the District Gazette. Mortgagees ought to take in the District Gazette affecting the lands of the District where they have land mortgaged to them. Sec 38 might give relief if the notice of attachment were not so published - but this is not certain, as notice of attachment might be held not to be an integral part of publishing the sale under Sec 36. Moreover only one month is given to allow the mortgagee to find out & to address the Collector.

by the Act are (1) a written demand (section 25); (2) notice of attachment (section 27); and (3) notice of sale (section 36, clause 2). The written demand is to be served "upon the defaulter", and there is no provision for its being sent to the mortgagee. Nor can such a provision be made, as, owing to the difficulty of ascertaining the names of all the mortgagees, the realization of the Govt. demand will be delayed. The notice of attachment is conspicuous affixed to some part of the land and is published in the District Gazette. The attachment is also notified by public proclamation on the land. A mortgagee, who does not reside in the village in which the land attached is situated, has thus to rely only on the publication of the notice of attachment in the District Gazette. The notice of sale is fixed up in the Collector's Office, Taluk cutcherry and the nearest Police Station and on the land to be sold. This is not likely to attract the mortgagee's attention. From the above statement of the law, it will be evident that the High Court's Judgment places the mortgagee in a worse position. He must ascertain all the villages, taluks and districts in which his creditor holds land at the time of his advancing the loan or in which he subsequently makes purchases, and must subscribe for all the District Gazettes. The result is that much injustice will be perpetrated and that the rate of interest

interest

interest will consequently be raised.

6. The Govt. therefore considered that the Act should be amended at once. Sir H.E. Stokes thought that the necessary amendment could be effected by the addition of a few words in two or three sections and that a redraft of the whole Act was unnecessary. It was pointed out in pages 25-28 of the note under G.O. No. 58 dated 7-1-92 that the amendment was not such a simple matter as it appeared to be, and that a considerable amount of redrafting was required.

The question was therefore referred to the Board for report.

7. The following difficulties were pointed out in the note in amending sec. 42 only of the Act so as to provide that lands shall be sold free of encumbrances only when they are included in the patta under which the arrears have accrued.

(i) "The cess payable to Govt. on account of water supplied for irrigation" is included in the definition of "public revenue" by sec. 1 of the Act. In the case of zemindari, inam and freehold lands, the land revenue being permanently fixed, the cess will not come under "land revenue" and the sale of land for its realization will not be free of encumbrances.

(ii) Under sec. 52 of the Act, all ^{cesses} ~~cases~~ lawfully imposed on land-- e.g. land and village cesses-- are recoverable

"in the same manner as arrears of

land

Question whether
such grave consequences
will follow.

HL

It can easily be ascertained
by reference to collection
of grave consequences have
ensued since the law was
declared in 1890. We did not
~~except perhaps Sec 36(2)~~
be justified in altering the law
& diminishing our security for
the public revenue unless the
existing law causes patent evils.

Mrs. G. and Sir H.E. Stokes
believed that our law is not in
accordance with the law of
other provinces, but, after going
through those laws, I doubt this.
In Bengal & Bombay the
holding is responsible. Here it is
the same. Holdings, both here
& here need not be all in the
same village or district.

JS

p. 36 & 37.

This objection is invalid.

Under sec 42 "all lands
brought to sale on acct. of
arrears of revenue shall be
sold free of all encumbrances."

HL

Now H.C. have ruled (VII 122
headnote p 434) that revenue
is not revenue due on the
defaulter's land.

JS

The correctness of this decision
seems questionable. Sec. 42
speaks of "arrears of revenue"
not of "land revenue." Presumably
the H.C. would add the words
"due on land."

HL

Revenue lands cultivated by
a ryot without a patta, in-
cluding poramboke lands.

Why? The Act does not
say the lands must be
entered in a patta.

HL

land revenue". In I.L.R. vii Madras 434
the High Court observed that the words
within inverted commas, like the ex-
pression "in like manner as for the
recovery of arrears of land revenue"
occurring in sec. 10 of the repealed
Abkari Act (III of 1864) indicated
only that the same procedure was to be
followed, and not that the sale was
free of encumbrances. But sales free
of encumbrances cannot be avoided, as
the cesses are entered in pattas, and
as accounts of collections are main-
tained only with reference to the
total amount shown in such pattas.
Separate accounts cannot be maintained
for the cesses, as they are amalgamated
with land revenue for purposes of col-
lection in ryotwar villages, in order
to minimise the work of village ac-
countants, and as in some cases the
cesses are included in the rates of
assessment.

(iii) The item of revenue shown on the
margin though entered in the patta as
miscellaneous revenue is not due on
the lands held by the defaulter under
the patta. Hence the sale of any of
the patta lands for the realization of
such revenue should be subject to en-
cumbrances, but as pointed out in
clause (ii) above, this result cannot
be secured in practice.

(iv) The same remarks apply to other
items of miscellaneous revenue, such as
fishery and ferry rents, cost of de-
marcation stones &c.

(v)

8.

(v) In the case of lands included in a patta, on which a charge is made after the Jamabandi, the charge, if unpaid, becomes an arrear; though not entered in the patta, it accrues on the lands held under it.

8. In the current read above the Board, after explaining the delay in submitting a reply to the Govt. reference, states that the question of amending the Act may lie over till an opportunity can be found for referring the decision in I.L.R. xiii Madras 477 for reconsideration by a Full Bench of the High Court. In the event of legislation being considered urgently called for, the Board would insert the following in sec. 42 of the Act after the words "free of all encumbrances" provided that the arrears have accrued under the patta or grant in which the lands are comprised. In proceeding against any immovable property not included in the patta or grant, the right, title and interest of the defaulter only shall be sold".

9. The following are the objections to the proposed amendment:-

- (i) It is not clear what is meant by the word "grant".
- (ii) It is doubtful what is meant by the words "have accrued under the patta". They may mean that the arrear is of the amount or portion of the amount entered in sec. 21 of the patta (vide form 11 in the Village Manual)

or

When G.O. 58 dated 7.1.92 was received, the Board considered the question of Act II of '64 which had been passed in 1863 & 1868 (in connection with Mr. G. S. Bill) & knowing that there were some faults in it, resolved to remedy them all at the same time as they were doing it in the same way to Mr. G. S. Bill which had been introduced. A big officer who was then present. The Secretary who

The word patta occurs nowhere in the Act. It could not be introduced without definition.

work was much in arrears could not find time to look at what Mr. G. S. Bill was in arrears at the same time. I, being an member then, took up the Court of Wards Bill & finished it. I was then going to take up the Bill for amending Act II of '64, but was prevented by the order from the Board.

The big officer who was then present. The Secretary who

notices of defects in Act II of '64, as far as I know, have not come before but if a Revenue Code is prepared (I wrote a memorandum on the subject last year & sent it for circulation to the Hon. Mr. B. S. Bill, it came to him, but I don't know what has become of it) the Hon. Mr. B. S. Bill would be considered.

Why?

The security of the revenue stands first.

or that the ~~the~~ arrear is of the revenue due a portion thereof on the lands specified in sec. I.

(iii) Section II of the patta as at present prepared includes in the total demand shown therein certain items of revenue not due on the ryot's land-i.e. land held by him under the patta, and it appears inequitable to mortgagees to sell any patta lands free of encumbrances for the recovery of such items of revenue. Mortgagees know that the revenue due on the land mortgaged to them is a first charge on such land and make their advances with such knowledge. They cannot, however, be expected to anticipate that the creditor will cultivate other lands without acquiring a right over them and thereby impose a further first charge on their security. Mr. Galton suggested that the items of revenue to be declared a first charge on land should be (1) assessment (2) water-cess, (3) land-cess & (4) village cess, and this suggestion was accepted by Sir H. E. Stokes. If it meets with approval, the definition of "public revenue" in sec. I of the Act may be amended so as to include only those items. The words "have accrued under the patta or grant in which the lands are comprised" may be replaced by "are arrears of revenue due on the lands included in the patta in which the lands sold are comprised".

(iv) The above amendment would necessitate the issue of separate pattas

for

The word patta is unknown to the Act.

for certain items of miscellaneous revenue, i.e. for such of them as are ^{not} due on lands held under patta. The issue of such pattas and the opening of an additional column in all the collection accounts for the separate exhibition of such miscellaneous revenue would increase work. Sir H.E. Stokes was apparently prepared to accept this, but Mr. Garstin did not see why for the sake of a sentiment miscellaneous revenue should lose some of its security.

(v) Again, the Board's proposed amendment leaves out the case of zemindari and inam lands. Under the High Court's ruling, when a defaulter holds two zemindari estates or two inam villages or two minor inams, one of each class may be sold free of encumbrances for arrears due on the other. To prevent this, the words "sanad, title-deed or" should be inserted before "patta".

10. A few other sections of the Act should be amended at the same time:--

(i) Section 1. The definition of "public revenue" should be amplified as follows. The word "public" may be omitted as not being used throughout the Act. "Revenue due on land" shall for purposes of this Act, be taken to include the land tax or assessment assessed on land, tax on trees when leviable as a substitute for, or in addition to, land assessment, cesses or other dues payable to Govt. on account of water supplied for irrigation,

and

and all taxes or cesses lawfully imposed upon the annual rent value or assessment of land."

(ii) The words "for purposes of this Act" obviate the objection raised in the previous office note and referred to in para 7(i). The demand of land revenue is no doubt permanently fixed in zemindari sanads, inam title-deeds, waste land and freehold title-deeds & permanent pattas. But for purposes of collection, the term "land revenue" may be defined to include this permanent demand and water-cess.

(iii) The definition includes under revenue due on land water-cess payable by the tenants of a zemindar or inamdar. Sec. 2 of the Act will then make the land irrigated by the tenants as security for the water-cess. An impression may be created that it can be sold free of encumbrances for the cess due by the tenant and such difficulty may result. It appears necessary therefore to exclude such water-cess from the definition by an explanation running somewhat as follows:--

Explanation 1. The cess payable to Govt. by a tenant of a landholder other than a holder of land on ryotwari settlement, on account of water supplied for irrigation, is not "revenue due on land" as above defined.

As Govt. only recognizes a ryotwari landholder and not his tenants, the words "other than a holder of land on ryotwar settlement" have been added.

(iv) The tree-tax when leviable as a substitute for land assessment (para 2 of S.O.No.5), or in addition to land assessment, is brought within the definition.

In cases in which tree-tax and land-tax are payable by different individuals, the land cannot be sold for arrears of tax on trees growing thereon. It is therefore necessary to add a further explanation to the definition as follows:--

Explanation 2. Tree-tax payable by a person other than the holder of the land on which the trees stand does not come within the definition.

(v) The definition also includes land and village cesses, which cannot be separated from land revenue for collection purposes without involving a vast amount of trouble to village officers.

(vi) The items of revenue referred to in the two suggested explanations will be collected under sec.52 of the Act.

11. Section 2. In I.L.R.viii, Madras 130 the High Court after reciting sec.2 of the Act observed "clearly something has to be supplied here. The land is the security for the revenue due on land only". The section may be made clearer by inserting the words "on such land" at the end, and the word "public" may be omitted.

12. Section 3. This section directs that every landholder shall pay "the

revenue

revenue due upon his land" on or before the day on which it falls due. According to the definition of "revenue due on land" as above suggested, and ^{new} under the Act as it stands, many items of miscellaneous revenue will be left out, as not being revenue due upon his land and it may be contended by a defaulter that there is no direction in the Act for their payment on any particular date. To remove this defect the words "or due by him" should be inserted after the words "the estate or land in respect of which it is claimed".

14. Section 52. As land and village cesses have been included under the definition of "revenue due on land", the words "and all cesses lawfully imposed on land" should be omitted. The word "land revenue" may be replaced by the words "revenue due on land" which is defined in sec.1 of the Act.

15. As it is proposed in this note to exclude certain items of miscellaneous revenue from the definition of "revenue due on land", it is desirable to examine the several items in some detail. For this purpose the list printed at page 49 of the Board's Jazabandi Report for fasli 1295 is adopted. The list in later reports has been cut down gradually to 10 or 11 items by clubbing the ^{new} important ones under "others".

(i) The most important items are (1) ^{and} jodi ~~the~~ quit-rent on minor inams and

"upon his land in the second line of the Section."
13. Section 25 - Mr. Garstin proposed to insert the words "the nature of the claim" after the words "the estate"

and (40) charge for water on zemindari and inam lands. The former is revenue due on land, as jodi or quit-rent is only favourable assessment on the inam lands, and is realizable under the ordinary provisions of the Act. The latter comes under revenue due on land as this ~~item~~ ^{term} is proposed to be defined, and is realizable as such, except when the charge for water is payable by a tenant. The reason for excluding the charge payable by the tenant from the definition was pointed out in para 10, clause (iii) of this note. It is open to the collector to proceed against the movable property of the defaulting tenant, including crops on the land, which presumably belong to him. When efforts are being made to secure fixity of tenure to zemindari tenants, it is unlikely that the Govt. will regard with favour any proceedings for the sale of his occupancy right for the arrear. The tenant's arrear will be realized under sec. 52 of the Act.

(ii) Item 6, land cultivated, but not included in the Jamabandi-- This refers to the charge made on patta lands after the Jamabandi, such as second crop assessment or charge for the irrigation of dry lands. The charge is revenue due on land held by the landholder and is recoverable as such.

(iii) In the case of ^{marginally} noted items, the revenue is revenue due on land, which is occupied. The arrears

11, 12 & 16. Revenue from Service inam lands when the service whether religious, charitable or village service is not rendered.

21. Revenue from lands assessed at favourable rates
36. Tax on backyards in excess of the limit allowed.
41. Quit-rent on bungalows and gardens.
42. Quit-rent and ground rent in the town of Madras.

What does
"occupied" mean?
H.S.

2. Tax on trees on unassessed waste lands;
14. Rent of gardens and topes
25 & 26. Rent on palmyrah or fruit trees.
13. Grazing tax or grass rent.
22. channak rent
23. chunam shell-rent
24. Brick kiln rent
27. Rent on roots for dyeing cloth
28. " on lime quarries
31. " from the sale of Durby grass
41. Rattan and coray rent.

- X 4. Revenue from rented villages
5. " " arani
7. " from lands cultivated without dharbhast for which no pattas have been granted.
8. Revenue from concealed cultivation
9, 15 & 17. Revenue from the cultivation of unclaimed, reverted (i.e. relinquished or resumed by Govt.) or sequestered inams.
10. Cultivation of poramboke lands
18 & 19. Revenue from hill villages, or from the lands on the sides & slopes of hills.
20. Revenue from boundary lands in dispute
30. Rents on islands situated in rivers
29. Rents on paduval lands, i.e., lands near the margin of rivers
32 & 33. Revenue from cultivation of jungle lands newly cleared by burning, and cultivation of dry lands (huckle cultivation) in South Canara.

of such revenue are realizable by the sale of the land free of encumbrances.

(iv) The items marginally noted appear to relate to lands to which the cultivators have no right, and on which they enter with ^{out} the express or implied permission of Govt. The arrears of revenue on such lands cannot be realized by their sale, and the sale of other lands owned by the defaulting cultivators must in fairness to mortgagees be sold subject to encumbrances. The revenue in these cases is revenue due on land, but not due on the lands held by the defaulter. Item 53 water tax on lands not held on patta belongs to this class. Item 50 double water rate on lands irrigated without permission will fall under this class, if the lands are not held on patta and to the class referred to in clause (iii) if they are occupied.

(v) The four items noted on the margin will be revenue due on land when the land on which the trees stand is occupied, in which case the tax represents land assessment. When the land is not occupied, the rent is realizable under sec. 52 of the Act.

(vi) The eight items beginning with grazing tax or grass rent can hardly be deemed to be land revenue, though the rent is levied on products derived from the land. The sale of land for the recovery of arrears of these rents should not, it is submitted, carry the result of extinguishing encumbrances. They are realizable under sec. 52 of

of the Act.

(vii) The remaining items do not generally require to be realized under the Act. Such, for instance, are items 34, 35, 36, 38, 39, 44, 46, 51 and 52. Item 3 should be recovered under the agreement by which the payment of a contribution was secured or by civil suits. The nature of items 43, 48 and 49 is not known. Item 47--process fees--is collected along with the arrear in connection with which process is issued, and does not require separate consideration.

16. From the foregoing analysis it will be observed that there is no great objection (1) to the definition of "revenue due on land" suggested in the note; (2) to the realization of revenue due on land, but not on any land held by the defaulter under any tenure, by the sale of his land subject to encumbrances; and (3) to the realization under sec. 52 of the Act of revenue now classed as miscellaneous revenue, but not coming within the definition of revenue due on land. Only two objections can be thought of. One is that the security for the revenue is to some extent diminished, but it is submitted that the present practice of selling land free of encumbrances in all cases is not equitable. The second is that separate columns will have to be opened in the village collection accounts--especially No. 14

ledger

- | | |
|--|-------------------------------|
| 3. Cess for repair of tanks | 49. Stala Farnam's rissums |
| 34. Commission on sale of distrained property | 51. Revenue deposit forfeited |
| 35. Commission on private estates under Govt. management | 52. Sale proceeds of trees. |
| 36. Revenue fines | |
| 38. Savings and refunds | |
| 39. Excess collection over the demand | |
| 43. Rissums collected from zemindars | |
| 44. Sale proceeds of Alindivi coir | |
| 46. Sale proceeds of waste lands | |
| 47. Revenue process service fees. | |
| 48. Sift on Seri lands not included in the dowie of previous rissums | |

As I have stated, I do not think there should be immediate legislation to meet the Ruling that the lands of all a D C. rissums for sale are subject to the same as due on any one of them (except, perhaps, that the publication of the notice of sale in the G. Gazette might be provided for); but I do think legislation is needed to meet the Ruling that land can only be sold free of encumbrances for arrears of revenue due on land, & that the phrase in Sec 52 in the same manner as arrears of land revenue, indicates only that the same procedure must be followed, so that land sold under that section & not sold on account of arrears of revenue due on land, is not sold free of encumbrances. I think this could be done by an amending Bill amending Act II of 64 as follows:—

Section 1 para 3 old run thus:

"Revenue due on land shall for the purposes of this Act be taken to include land tax or assessment assessed on land, tax or dues which is levied as a substitute for or in addition to the land assessment, all cesses lawfully imposed on land, and

ledger and 16 D.C.B. account-- for revenue due on land held by the ryots and for other revenue. This additional trouble/cannot, it is submitted, be avoided.

17. The Act is no doubt capable of being improved in several particulars; but it was thought desirable to confine the amendment to the difficulty raised by the Judgment of the High Court, leaving its further revision to a future date.

18. If the suggestions made in the foregoing paras be generally approved, the note may be forwarded for the remarks of the Board.

KO

719

The Board's four years of procrastination have not produced much result. It seems to be taken for granted by the Bd., as it is in the office now, that the High Court decision making the sale of all lands sold for arrears of land revenue are sold free of all encumbrances is foreign to the intention of the Act. The legislative discussions &c. prior to the passing of Act II of 1864 have not been put up & I will not delay this file to call for them, but considering the austere views that were held thirty years ago on the priority of Govt. claims to everything

Current No.

From

Dated

189

FOR ORDERS.

One of the most important points in the Act under revision is that it does not provide for the collection of arrears of revenue between the dates of the sale notice & of the sale. This might now be remedied.

The HD has been informed of the amendments considered necessary, & why they are so considered, & asked to report their opinion speedily, in order that the Bill providing for them may be amalgamated with Bill 3 of '96, being the Bill to amend the Madras Revenue Recovery Act of '64, which is already before the Council & has been revised by a Select Committee.

21/9/96

The H.C. ruling is, in my view, not only according to what the law is, but according to what it ought to be - I have no objection to legislation in the other direction proposed by my Hon. colleague, though

and of ~~for~~ purchasers who have not had the lands they have bought, registered in their names, to alter the law as it now exists with regard to the ^{freedom from all encumbrances of} sale of lands ~~for~~ sold for arrears of revenue? ~~for~~ ~~the~~ ~~encumbrances~~ It may be said that the mortgagee may safeguard himself by refusing to advance money on land until it is registered in his name. This of course would make him quite secure, but then the mortgagor - unless the sum advanced equaled the full value of the land - would be put in a correspondingly dangerous position. Again the mortgagee might insist on a joint puttab for the land in the names of

else I should be surprised if there is on record anything to show that the High Court ruling is in any way at variance with the intention of the Legislature. The fact that the word patta is nowhere used in the Act & that Sec 42 says "all lands brought to sale on account of arrears of revenue shall be sold free of all encumbrances" greatly strengthen this view. In the absence of any restriction in the only alternative to the High Court view would be that each field or fraction of a field is liable for the arrears due on it, and unless there were a separate patta for each field or fraction of a field this alternative could never be acted on in practice.

I do not think anything is to be gained by waiting as the Hon. proposes for a case to be put before a full bench of the High Court. Govt. must it appears to me decide a matter of principle. Is it desirable in consideration of the claims of mortgagees

to be made under the Agriculturists' Loans Act 1884.

Section 2 and now thus: -

~~The land, the buildings upon it belonging to the Defaulter, the buildings upon it & its products shall be regarded as the security for the revenue due on land~~

Section 3

Provided that the cess payable to Govt. by a tenant of a landholder other than a holder of land on ryotwari settlement on account of water supplied for irrigation; and the land tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land.

Section 2 and now thus: The land belonging to the person who is bound to pay the revenue due on land, the buildings upon it & its products shall be regarded as the security of the revenue due on land.

Section 3 in part or otherwise after "land"

Now do I. The ruling of the HC is distinctly & I think it is right.

Section 42 Revenue due on land - of revenue.

Section 52 and now thus: all amount of revenue, other than revenue due on land may be received in the same manner &c &c.

Section 3 (2) may also be amended so as to require that the notice of sale should be published in the Govt. Gazette

Before it is conceded that the law as it now stands or has been interpreted, should be altered, it is I submit necessary for Govt to know that actual mischief is now being done, that fraud is actually being perpetrated on a considerable scale or that (as feared in the office note) the rate of interest demanded by money lenders on landed security has risen owing to fear of fraud.

it does not seem to
me to be a pressing matter &
I don't think that it could
possibly be tacked on to the Bill
~~after~~ already before the Leg.^{re}
Ch. -

23

The Bd. has already passed an
Executive order to restrict
para 3 of current. possibly mischief. another
useful order would be to
require all sales under Sec
36 to be advertised in
the D. Gazette.

Day -

5

21/9/96

HA 12.9.96

FOR ORDERS.

The Hon. Mr. Grose, C.I.E.

The Hon. Mr. Bliss, C.I.E.

alland
ms

Always
BS

I am not clear after reading this note through several times what the Secretary is driving at or what any House Committee has decided should be done. I am not even sure whether the latter is really as I have done to the two questions above. If he would, it seems to me that, apart from the small question of the review of arrears falling due between date of demand & attachment & date of sale, all that is needed can be effected by (1) widening the definition of "Revenue" as proposed, subject to my suggestion, and (2), to make s. 62 quite clear, adding "of any kind" after the word "revenue". But (2) will hardly be necessary if "revenue" is defined as proposed. It will suffice, I think,

1. to define "revenue"
2. ——— arrears, to save verbiage - This may be done by adding s. 4 only the words husband to be added to s. 37 or so that effect.
3. Add to s. 3 as proposed
4. Put "even though" instead of "unless" in s. 52.

But I cannot see whether it wd. not be best of all simply to do nothing.

Write me again

30/10/90

We have pronounced our
opinion as to what the law is
to ~~be~~ it ought to be. The Soc.
makes valuable suggestions as
to how our views can be carried
out

They are wiser to the fact, which
 is that there are two great "Blind"
 all the deaf-mutes hands, whose eyes
 situated, are, in my opinion, as liable
 to take for answers. This seems to be
 the present law as ruled by the
 High Court; but great authorities
 (including Sir H. E. Stokes) insist
 and it differs only on the point
 that the law cannot be held that

Two questions arise in this matter.

1. When an arrear of revenue accrues what lands of the defaulter can be sold in satisfaction of it?
2. When land is so sold when is it and should it be sold free of all encumbrances?

As to the ~~questions~~^{matter} I have never heard it contended that the Collr. cannot sell any piece of land registered in the name of a particular individual which he might choose for an arrear of revenue other than land revenue.

In the case of land revenue it seems to have been thought that only land comprised in the same Putta could be so sold. It was no doubt thought that "the land" in section 2 meant the very piece of land on which the arrear accrued. In VIII Madras 130 it is laid down that "the land" meant any land in the Putta.

The High Court, have now gone much further. They have held that not only land in the same Putta can be sold but in the same holding. The District Judge says:- "Whether ^{he} (the defaulter) has one Putta or many he has certain amount in the aggregate to pay to Govt. and if he falls into arrear the Collr. may say that he considers the arrear to be due from one piece of land in his holding or from another though the defaulter may have absolutely paid up the dues on that putta for that particular piece of land. I understand that it is the view of the present member of Govt. that this state of the law should be left unaltered.

If it be desired to incorporate this view in Act II of 1864, section 3 should be amended by inserting after "the land" the words "in the holding of the defaulter" and section 44 may be amended to run that it shall be lawful for the Collr. to sell the whole or any portion of the land registered ^{as} in the holding of the defaulter where/ver found. This brings us to the second question. When land is so sold for an arrear of revenue?

- (a) When is it
- (b) When ought it to be sold free of encumbrances?

(a) In XIII Madras 477 the High Court say: The only procedure prescribed ^{for sales} ~~for sales~~ for arrears of revenue is that contained in section 43 which enacts that the lands shall be sold free of all encumbrances". These words are ^{very} wide and practically over-ruled, (VII Madras 434). In ^{the latter} ~~the latter~~ case the judges say "Taking these sections together, i.e. sections 3, 37, 42 and 52 the intention is clear that the purchase is free of prior encumbrances only when the arrears ^{is} of public revenue of which the land is the first security by statutory declaration". They rule ^{that} section 43 has not been extended by section 52 to sales for arrears of abkari revenue and by implication it is held that the same is the case in regard to any enactment in which arrears of revenue ^{due} or other charges are made recoverable "as if or in like manner as for the recovery of arrears of land revenue". The question thus resolves itself into this. To what sales for arrears under

the clause. He said he made no. My answer with regard to this is not quite the same as the one in the Bill. When land is sold for arrears of revenue, such as abkari rent, the High Court have ruled that it is not sold free of encumbrances, & I don't think it should be. In some cases, like this, the right title & interest of the defaulter may not be saleable. It is doubtful whether when the arrears the ruling of the High Court applies & to what extent it does not, & this doubt should be put at rest, as it can be by defining the "revenue" referred to in Sec 42. As regards items (having nothing to do with the land) which are usually entered in puttas, such as fishery rent, a distinction as to whether land sold on account of arrears of these should be sold subject to, or free of encumbrances would make it necessary to issue separate puttas. This would diminish the security of the State with regard to revenue on account of which land has hitherto been sold free of arrears. This will be obviated by the statutory declaration in the Sec proposed at page 45 of the Bill to append to Sec 42. As regards some items which are not usually entered in puttas, such as

Abkari rent, this will still be the rule for such arrears. Sale of the right title & interest of the defaulter only, & I think this is right, but if not, they must be included in the definition of the "revenue" where Sec 42 applies. As regards

See definition "Public Revenue".
Said under the Agricultural Loans Act it is intended that land should be sold for arrears free of encumbrances, & I think it should be; but Sec 5 of that Act provides that I think it will be better to define "Revenue" as suggested below.

(Intld.) J.G.
arrears shall be recoverable as if they were arrears of land revenue, & the High Court have ruled that this expression only means that land is to be attached & sold in the same way as it is attached & sold for arrears of land revenue. But does not mean that the sale shall be free of encumbrances. This difficulty will be obviated by including here loans in the definition of the "revenue" of Sec. 42

On reconsideration I think that the definition of revenue proposed by the Sec goes too far.

I am not sure about this but should be omitted. It is true that the High Court have held that the owner of a tree has an interest in land for the purposes

(Intld.) J.G.

under Act II of 1864 does section 42 apply? It is because the answer to this question is very difficult and doubtful that I understand Hon. Members to think that legislation is required. Hitherto it has been practically the fact that section 42 applied to sales for all arrears under a land revenue Putta. In that Putta there are many items, i.e. Fishery Rent, which are not arrears "due on land". and I understand it to be the Hon. Mr. Grose's view that section 42 should apply to items of revenue "due on land only". He therefore proposes to define "Revenue due on land" in section 1. In his definition it includes

1. "Land Tax or assessment assessed on land".
 2. "Tax on trees levied in addition to or as a substitute for the land assessment."
 3. "All cesses lawfully imposed on land".
 4. "Loans made under the Agricultural Loans Act 1884."
- Provided that the cess payable to Govt. by a tenant or a land-holder other than a holder of land on Botwari settlement on account of water supplied for irrigation and tree tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land.

In regard to this definition I would submit that item No. 2 "Tax on trees" should

be omitted. It is true that the High Court have held that the owner of a tree has an interest in land for the purposes

poses

purposes of the Forest Act but in this view all Forest Revenue is as much revenue due on land or is the Putta Tree Tax entered in the Putta. The collection of Tree Tax in addition to Land Revenue is now forbidden and it is in truth never a substitute for land revenue. This phrase was ~~inserted~~ ^{inserted} by the Board when Col. Campbell Walker wanted to steal a large slice of land revenue for forests, but in truth tree tax is levied not as a substitute for but instead of land revenue. The Collr. can levy one or the other as he pleases. If it were levied as a substitute for land revenue, the holder of the tree putta would have a claim as owner of the land on which the tree stands. The tree tax is 3 annas on a mango tree. This might stand on a Survey No. assessed at 2 annas an acre and in extent 6 acres. Lately a claim was made before me to the whole six acres. I rejected the claim.

Was I wrong? If so to what was there a valid claim? When it was proposed before, to amend section 42 so as to confine it to sale for revenue "due on land" it was objected that to enable the distinction between sales free of and subject to encumbrances to be practically carried out it would be necessary to have two puttass, one for revenue due on land and the other for other revenue. It was also objected that to confine sales under a land revenue Putta free of encumbrances only to sale for revenue due on land would diminish the security for the land revenue. Both these objections can be met by the following simple expedient, viz. to insert

The suggestion how it can be provided that sales for revenue shall cover arrears that accrue subsequent to the notice but before the sale is

To understand the point of this it is necessary to note how Puttas are given in the village around the P.C. Such trees are Putta trees. They are identified and located solely by the Survey number in which they stand.

The suggestion also, that arrears should be substituted for "arrear" in section 42 is good. I don't think the further need be defined, or that any alternative need be made with regard to the definition of "arrear" in sec 42. But it will add certainly to the law without holding as a condition of the sale when the arrears are due.

The valid claim is only to the bit of land occupied by the tree.

(Intld.) J.G.

This certainly is a great objection.

(Intld.) J.G.

This is a good idea and should be carried out.

(Intld.) J.G.

I don't quite follow this.

If the law provides that the sale shall be free of encumbrances; a declaration of the fact in the sale deed will not add force to that provision and vice versa.

(Intld.) J.G.

+ what I meant when I used "must" was that for the purpose of notice to purchasers this was the only place in which the fact could be conveniently stated.

Approved.

(Intld.) J.G.

a statutory direction at the end of section 42 to the effect that any payments made by a defaulter shall be credited first to revenue other than revenue due on land. If there be any arrear under a Putta there must under these circumstances be an arrear of revenue due on land. Hence, as now, practically all sales for arrears under a land revenue Putta will be free of encumbrances and the security for the revenue will remain undiminished. To prevent any doubt on this point provision should be made that the sale notice must contain a specific statement that the sale is free of or subject to encumbrances which statement may be made conclusive evidence of this fact; for, since its truth or falsehood will be apparent by mere inspection of the Putta, ^{as the} one would dare to state it falsely with a fraudulent intent and if they did it would invalidate the sale.

The Hon. Member ~~also~~ wishes also that the Act should be amended so that it may be possible to recover the arrears which accrue due between the date of the sale notice and that of the sale. The ~~highest~~ ^{highest} court set aside the sale in the Shendamangalam case because the

arrears had never been demanded from the defaulter. Hence there seems to be doubt whether the arrears in question can be recovered. To meet this point I think it is necessary only to amend section 37 and section 42. In section 37 after the words "full amount of the arrears of revenue" the words "due on the date of sale" whether such arrears have been demanded under section 8 or section 25 or not must be inserted. In Section 42 should

run

run as follow:- Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all encumbrances. When such land or other property or ~~asset~~ ^{asset} of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise the sale proceeds shall be applied to liquidating any arrears due by the defaulter on the date of sale whether such arrears have been demanded under section 8 or Section 25 or ~~not~~ ^{not} any interest due on such arrears, the ~~extension~~ ^{extension} of attachment and sale, and any other ~~done~~ ^{done} in respect of such sale: and if any balance shall remain after liquidating such arrears and charges it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by a defaulter prior to sale as well as any arrears realized by sale or, as above provided, ~~of~~ ^{after} sale shall be credited first on account of revenue other than revenue due on land and then to revenue due on land.

In section 3 after the words "due upon the land" the words "or otherwise" have to be inserted.

I have called for the note referred to by the Hon. Mr. Grose from the Board of Revenue. When it is received I will submit it with a further note. Meanwhile if the matter under discussion be disposed of it will facilitate the earlier disposal of the whole matter.

This section should be altered to this effect.

(Intld.) J.G.

Yes.

(Intld.) J.G.

This will be advantageous. My idea that the Bill prepared in accordance with this note might be amalgamated with the Bill now before the Council might be relinquished

(Intld.) J.G.

I submit that there is no need for one form of procedure for recovering land revenue and another for recovering the rent of a house belonging to Govt. or one for abkari and another for Fishery rent or for the sale proceeds of Govt. timber.

I agree.

(Intld.) J.G.

A definition should be inserted to this effect.

(Intld.) J.G.

Yes; the word "unless" might be taken to bar the collection under II of 1864 of any tax with regard to which any provision is made for recovery is made in another Act.

(Intld.) J.G.

I am not aware of any inconvenience of which has been experienced in want of the definition - I am better acquainted with the law.

It should be defined, but the word "puttah" should not be used.

(Intld.) J.G.

One of the difficulties in working this Act in practice is to know to what dues it can be applied. This is due to the fact that "Revenue" is nowhere defined. This difficulty would be removed by defining revenue. I would suggest the following definition.

"Revenue" means all cesses, rates and taxes, as also other imposts collected under the authority of any Act of any legislature in India; also any sums due for or for the use or enjoyment of any right or property vested in the State. In section 52 for the word "unless" I would substitute "even though" in the last line but one. "Defaulter" is another word frequently used in the Act and often misunderstood in practice. I would suggest the following definition.

"Defaulter" means any one registered as responsible for any ~~which is in arrears~~ ^{any which is in arrears} revenue or from whom any revenue is due.

Owing to the changes contemplated above it seems necessary to define holding. "Holding" means all the immovable property held by one person wherever found and whether in one Putta or not.

The definitions should be arranged in proper order, in No. 1. Perhaps also the definition of an arrear should be put there.

Type written in accordance with the Hon. Mr. Peliss's instructions & submitted.

29/10/16.

I cannot give that Govt. has the power to recover anything that is not revenue, that is, moneys realized by virtue of the power which the State possesses as a State, should be recovered under the Act. If Govt. are above it occupies in respect of that house the same position as all other owners of houses; and, if it belongs to the house, it should be left to recover the rent in the same way as other owners of houses do. Moneys realized as house-rent, sale of old materials, &c. are receipts, not revenue. So far as I know, the numerous State Railways which exist can recover what is due to them only in the same way as Railways which are not State Railways can. Why should Govt., as a house owner, be put in a different position from other house owners, when it is in a different position as an owner of Railways from other owners of Railways?

B.S.
30/10/96

28/11/96

Note for the Secretary.

16

I submit as personally directed a proof copy of such of the sections in Act II of 1864, which it is proposed to amend, and of the amended sections. The amendments already approved by the Honble members in the note on Current no. 5084 of 1896, are printed in ordinary type, and those suggested in the office note on Current no. 7323, in italics. The Hon^{ble} Mr. Polier approves the proposal to widen the definition of revenue, but it is not clear whether he accepts the definition proposed by the Secretary or by the Honble Mr. Croze. The Honble Mr. Croze first accepted the Secretary's definition, but on reconsideration he objected to it as going too far. I have adopted the Honble Mr. Croze's definition.

3. The Honble Mr. Polier proposes to define 'arrears' to save verbiage. The Honble Mr. Croze considers this unnecessary. Pending further instructions in the matter, section 4 has been left unaltered. Orders are required as to whether section 59 of the Act, should not be amended.

owing to the doubt raised by certain decisions of the Madras High Court, (vide para 50 of the office note under current no. 7323)

21/4/97

Mr. Bliss C.B.
Mr. Bliss: C.B.

The "Proof", headed "Existing Act of Act as proposed", shows the amendments considered necessary by us in Act II of '64 (underlined or marked in ink by me) & the amendments suggested in an office note prepared in the R.D.'s office (shown in italics) 5 or 6 years ago. I have marked this Note, & had it called for. As stated in the Note, Act II of '64 has worked well enough for the last 33 years. It seems to me undesirable, therefore, to alter it more than is absolutely necessary. Most of the amendments suggested in the Note do as we have made verbal improvements, in force in the Legislature what has been done by the Executive, or other points which have been doubted in the past, but have now been decided by the H.C. in such a way that doubt can no longer arise about them. I do not propose to adopt such amendments, but there are a few which seem necessary & should find a place in the amending Bill. My remarks accordingly are entered in the "Proof". My opinion as to whether the amendments are necessary or unnecessary are based on the reasons given in the R.D.'s Note.

One reconsideration I agree that the law ought to be defined, as any revenue left unpaid on the date it is due. See note on "Proof".

Sanctioned
proof B.B.
29/7/97 20/8/97

Amendment Bill II of 1864.

The Board was called on to submit proposals for amending Act II of 1864 in consequence of the High Court ruling in I.L.R. XIII Madras Page 477 and after several years they submitted the report called for. The High Court then not only held that lands under one putta may be sold for arrears due under another putta held by the same defaulter but also that by such sale the lands passed free of encumbrances. To embody and correct these rulings, on the last note on these papers, it has been agreed, accordingly, to amend Sec. 1, 2, 3, 37 in part, 42 & 52. In the proof of amendments annexed these approved amendments are shown in ordinary type.

2. The Hon'ble Mr. Bliss approves the proposal to widen the definition of "revenue", but it is not clear whether he accepts the definition proposed by the Secretary or by the Hon'ble Mr. Grose. The Hon'ble Mr. Grose first accepted the Secretary's definition, but on reconsideration he objected to it as going too far. I have adopted the Hon'ble Mr. Grose's definition.

3. The Hon'ble Mr. Bliss proposes to define "arrears" to save vertilage. The Hon'ble Mr. Grose considers this unnecessary. Pending further instructions in the matter, section 4 has been left

4. In the notes on the above papers it came to notice that a note on the same subject had been prepared in the Board's office in which a number of amendments had been proposed. These amendments and the sections to which they relate are printed in italics in the annexed proof. Many call for no remark but in regard to some I have a few comments to make.

Sec. 25 I do not think the words "in the village in which the arrears fell due" should be added either to "abode" or "residence."

Sec. 52. I do not think it ^{is} expedient
to omit from the section.

Fees.

C e s s e s .

Sec. 59. Orders are solicited on the points raised under this section in the note in C.No. 7322.

Section 1, paragraph 3.—Public revenue due on land shall, for the purposes of this Act, be taken to include cesses or other dues payable to Government on account of water supplied for irrigation.

Revenue due on land and "Holding" and
is ^{united census} marked into activities. The word, "his",
in the M.C.S. part of the definition of "Holding"
^{also in the "his" at X} and be struck out. I now think that "Arrears"
and be defined in this Section. S. 11 of
Act 22 of '64 refers to land revenue only,
and be ~~struck out~~ omitted.

Section 2.—The land, the buildings upon it, and its products, shall be regarded as the security of the public revenue.

Section 3.—Every landholder shall pay to the Collector, or other officer empowered by him, to receive it, the revenue due upon his land, on or before the day, *et cetera*.

Section 5.—Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's moveable and immoveable property, or by execution against the person of the defaulter in manner hereinafter provided.

Sheet 12 of the office-note in Current No. 7323.

Section 6.—If the defaulter hold under a Sunnud-i-milkut Istimrar or other similar instrument, the mode of recovering the arrear shall be in accordance with the terms of such sunnud. *In the case of other defaulters, the Collector or other officer empowered by the Collector in that behalf, may, at his discretion proceed to realise the*

If you omit S. 4, you must insert a definition of some kind of "in arrear", and also, I think of "default", i.e., "Revenue is said to be in arrear when it has not been paid on or before the day appointed by the Collector for its payment. A "default" means a person who has failed to pay revenue", or to that effect. I cannot think of any particular form of words - R.H.

I have said that "an ear" must be defined. Wherever defaulters is used in the Act, it clearly means a man who has defaulted by not paying revenue due by him & I don't think it needs definition. ¹⁹ "defaulter" ^{20/2/97}

Section 1, paragraph 3. Revenue due on land shall, for the purposes of this Act, be taken to include land tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses lawfully imposed on land, and loans made under the Agriculturists' Loans Act, 1884

Provided that the cess payable to Government by a tenant of a landholder other than a holder of land on Ryotwar Settlement on account of water supplied for irrigation; and tree-tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land.

"Holding" includes all the immovable property held by one person wherever found.

Section 2.—The land ~~belonging to the~~ ^{person who is bound to pay the revenue} ~~due on land~~, the buildings upon it, and its products, shall be regarded as the security of the revenue due on land.

Section 3.—Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land, or otherwise, on or before the day, *et cetera*.

Section 5.—Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, *by all or any of the undermentioned processes* in manner hereinafter provided:—

(a) by the distraint and sale of defaulters' moveable property including debts or choses in action:

(b) by the attachment and sale of the defaulter's immoveable property ;

(c) by attaching and taking under Government management the defaulters' immovable property;

(d) by the arrest and imprisonment of the defaulter.

Section 6.—If the defaulter hold under Sunnud-i-milkut Istimrar or other similar instrument, the mode of recovering the arrears shall be in accordance with the terms of such sunnud. * * *

Proof
10/4/97.

Weyersberg

Revised
The phrase
and the
4-3-5
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Rev.

9 and one under
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impossible for

The revenue
- ~~is holding~~
- ~~of~~

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after a while
up from land.

This alteration
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house number

24

re alterations
is necessary.
MM 25

also, I think
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- tied to
little -

letter is
from -
Don't refuse
letter" 20
20/2/97

I don't like this defn of "Holding" -
who is to say that this is that person
is "responsible for revenue"? When
we go into considerations of this kind, we
deviate from what should be our principle,
viz., that the person ~~responsible~~ to whom
we look in the person who is rep^d under Reg.
XXVI of 1802. I should say "Holding" includes
all immovable property situated in the Dist.
accounts as held by one person singly or
two or more persons jointly, or to that effect.
He is the person responsible.

17/8/97

I think the definition proposed
by my Hon^{ble} Col^{le} agree is
best

17/8/97

interest all fractions of a penny shall be taken as one penny and all
fractions of a penny shall be taken as one penny
This certainly will be an improvement but it raises the rate of interest
it may be opposed 85.3.2
arrear by the sale of either the moveable or
immovable property of the defaulter or of
both.

Sheet 13 of the office-note in Current No. 7323.
Section 7.—Arrears of revenue shall
bear interest at the rate of six per cent. per
annum.

Sheet 13 and 14 of the office-note in Current
No. 7323.

Section 8, clause 1.—The Collector or
other officer empowered by the Collector
in that behalf, shall furnish to the person
employed to distrain the property of a
defaulter, a demand in writing and signed
with his name, specifying the name of the
defaulter, the amount of the arrear for
which the distress may be issued, and the
date on which the arrear fell due. The
person employed to distrain, shall produce
the writing which, if the arrear together
with the batta due to him under section 53
be not at once paid, shall be his authority
for making the distress, et cetera.

Paragraph 20 of the office-note in Current
No. 7323.

Section 8, clause 3.—When a defaulter
may be absent, a copy of the writing with
the endorsement shall be fixed or left at
his usual place of residence, or on the pre-
mises where the property may have been
distrained, before the expiration of the 3rd
day, calculating from the day of the distress.
Paragraph 21 of the office-note in Current
No. 7323.

Section 7.—Arrears of revenue shall
bear interest at the rate of six and a quarter
per cent. per annum; but it shall be compe-
tent to the Board of Revenue to remit by a
general or special order the interest due in
respect of any arrears.

Section 8, clause 1.—The Collector or
other officer empowered by the Collector
in that behalf, shall furnish to the person
employed to distrain the property of a
defaulter, a demand in writing and signed
with his name, specifying the name of the
defaulter, the amount of the arrear for
which the distress may be issued, and the
date on which the arrear fell due. The
person employed to distrain, shall produce
the writing which, if the arrear together
with the batta due under section 53 be not
at once paid, shall be his authority for
making the distress, et cetera.

Section 8, clause 3.—When a defaulter
may be absent, a copy of the writing with
the endorsement shall on the day on which
the property may be distrained, be fixed or
left at his usual place of residence, or on
the premises where the property may have
been distrained.

Section 8, clause 4.—In the case of (a)
a debt not secured by a negotiable instru-
ment, (b) a share in the capital of any public
company or corporation, (c) other moveable
property not in the possession of the
defaulter, the attachment shall be made by a
written order prohibiting—(a) in the case of
the debt, the creditor from receiving the
debt, and the debtor from making payment
thereof until the further order of the Col-
lector, (b) in the case of the share, the
person in whose name the share may be
standing from transferring the same or
receiving any dividend thereon, (c) in the
case of the other moveable property, the
person in possession of the same from giving
it over to the defaulter. A copy of such
order shall be fixed up in a conspicuous part
of the village in which the arrear accrued,
and another copy of the same shall be sent
in the case of the debt to the debtor, in the
case of the share to the proper officer of the
company or corporation, and in the case of
the other moveable property to the person in

20
"the Taluk (treasury)"? Attorney
"the Treasury" BS

Paragraph 22 of the office-note in Current
No. 7323.

See above BS

Paragraph 22 of the office-note in Current
No. 7323.

Paragraph 22 of the office-note in Current
No. 7323.

Paragraph 22 of the office-note in Current
No. 7323.

Paragraph 23 of the office-note in Current
No. 7323.

Section 9.—When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into, to the satisfaction of the Collector or other officer empowered by the Collector in that behalf, the distrainer shall transmit an inventory of the property distrained to the nearest public officer empowered to sell distrained property under Act VII of 1839, in order that it may be publicly sold for the discharge of the arrear due with interest, batta, and cost of distraint.

Paragraph 24 of the office-note in Current
No. 7323.

possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into the taluk and such payment shall discharge him as effectually as payment to the party entitled to the same.

Section 8, clause 5.—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required.

Every such officer may from time to time pay into the taluk, the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter.

Section 8, clause 6.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the Collector from whom the notice issued.

Section 8, clause 7.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled.

Section 8, clause 8.—Provided that the implements of husbandry and one pair of ploughing cattle for each cultivator shall not be liable to attachment.

Section 9.—Immediately after the distress, the distrainer shall transmit an inventory of the property distrained to the Tahsildar in order that it may be publicly sold for the discharge of the arrear due with interest, batta, and cost of distraint.

Section 16.—Where a defaulter may make a fraudulent conveyance of property to prevent the distress of arrears, any Civil Court, *et cetera*.
Paragraph 25 of the office-note in Current No. 7323.

Section 22.—The public officer empowered under Act VII of 1839 to sell distressed property shall cause to be affixed, *et cetera*.
Paragraph 26 of the office-note in Current No. 7323.

Paragraph 27 of the office-note in Current No. 7323.

Defaulter not to be admitted for Judgment Debtor

Paragraph 28 of the office-note in Current No. 7323.

Paragraph 29 of the office-note in Current No. 7323.

Registering any transfer of the share in favour of

Paragraph 28 of the office-note in Current No. 7323.

Paragraph 28 of the office-note in Current No. 7323.

Section 16.—Where a defaulter may make a fraudulent conveyance of property to prevent its distress for arrears, any Civil Court *et cetera*.
Land Revenue Improvement, Thak, Thak, it doesn't matter

Section 22.—The Tahsildar shall cause to be affixed, *et cetera*.
BS

Section 23, clause 2.—If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorize its sale through a broker at the market rate of the day.
BS 29

Section 24-A.—When the property sold is any moveable property to which the judgment-debtor is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.
BS 29

Section 24-B.—When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.
BS 29

Section 24-C.—When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to any person except the purchaser.
BS

Section 24-D.—If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.
BS 29

Section 25.—Before a Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of a defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid. Such demand shall be served by delivering a copy to the defaulter or to some adult male member of his family at his usual place of abode, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

Paragraph 29 of the office-note in Current No. 7323.

Section 26.—When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into, the satisfaction of the Collector or other officer empowered by the Collector in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

Paragraph 30 of the office-note in Current No. 7323.

Section 27.—The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date therein mentioned, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land and by publication of the notice in the District Gazette.

Paragraph 31 of the office-note in Current No. 7323.

Section 34.—All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due and interest thereon at the rate of six per cent. per annum, et cetera.

Paragraph 33 of the office-note in Current No. 7323.

Section 25.—Before a Collector or other officer empowered by the Collector in that behalf, proceeds to attach the land of a defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time when the arrear fell due. Such demand shall be served by delivering a copy to the defaulter or to some adult male member of his family at his usual place of abode in the village in which the arrear fell due, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last known residence in the village in which the arrear fell due, or on some conspicuous part of the land about to be attached, or at the village chavadi or other recognised village meeting place.

Section 26.—When the amount due is not paid pursuant to the terms of the demand, the officer serving the demand shall proceed to recover the arrear, by the attachment and sale of the defaulter's land in the following manner.

Section 27.—The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land and at the village chavadi or other recognised village meeting place. The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date to be notified for the sale, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land and at the village chavadi or other recognised village meeting place and by publication of the notice in the District Gazette.

Section 34.—All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due and interest thereon at the rate of six and a quarter per cent. per annum, et cetera.

unnecessary
and, I think,
bad

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unnecessary
AA

unnecessary
BB

unnecessary
CC
Yes, if say is
allowed

BB
BB
BB

Section 36, clause 1.—The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector of the district in which the property is situated or other officer empowered by the Collector in that behalf. The time may be either previous to or after the expiration of the fasli year.

Paragraph 34 of the office-note in Current No. 7323.

Section 36, clause 2.—The last sentence. This notice shall be fixed up one month at least *in the Collector's office* and in the taluk cutcherry ~~and~~ in the nearest police station-house, and on some conspicuous part of the land.

Paragraph 35 of the office-note in Current No. 7323.

Section 36, clause 4.—Where the purchaser may refuse or omit to deposit the said sum of money or to complete the payment of the remaining purchase money, the property shall be resold at the expense and hazard of such purchaser, *et cetera.*

Paragraph 36 of the office-note in Current No. 7323.

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the steps necessary for sale, and thereupon the sale shall be stayed.

Paragraph 37 of the office-note in Current No. 7323.

Paragraph 38 of the office-note in Current No. 7323.

Paragraph 39 of the office-note in Current No. 7323.

Section 39.—When lands may be purchased at public sale, the Collector . . . shall publish . . . together with a declaration of the lawful succession

Section 36, clause 1.—The sale shall be by public auction, *but shall not take place before the expiration of a month from the date on which the notice of attachment was published in the District Gazette.* The time and place, *et cetera.*

Section 36, clause 2.—The last sentence. This notice shall be fixed up a fortnight at least before the sale in the taluk cutcherry in the nearest [police station-house on some conspicuous part of the land and at the village chavadi or other recognised village meeting place. The notice shall also be published in the District Gazette.

Section 36, clause 4.—Where the purchaser may refuse or omit to deposit the said sum of money or to complete the payment of the remaining purchase money, the property *may be sold at the expense and hazard of such purchaser, et cetera.*

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not, with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the necessary steps for sale, and thereupon the sale shall be stayed. At the end of the section add:

Explanation.—The word "sale" in this section includes a resale.

Section 38, clause 6.—It shall be competent to the Collector of the district, either of his own motion or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer's order.

Section 38, clause 7.—In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer.

Section 39.—When lands may be purchased at public sale, the Collector . . . shall publish . . . together with a declaration that such purchaser has

from the Collector the functions of a Civil Court

of such purchaser to all the rights and property of the former land holder in the said lands.

Paragraph 41 of the office-note in Current No. 7323.

Section 42.—All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, and if any balance shall remain after liquidating the arrears with interest, and the expenses of attachment and sale, and other costs due in respect of such arrears, it shall be paid over to the defaulter, unless such payment be prohibited by the injunction of a court of competent jurisdiction.

purchased the said lands absolutely, i.e., free of all incumbrances, or that he has succeeded only to the interest of the defaulter in the said lands.

Section 42.—Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, any interest due on such arrears, the expenses of attachment and sale, and any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by a defaulter prior to sale, as well as any arrears realised by sale, ~~are as above defined~~, after sale, shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.

Section 42.—Add the following explanation:—

Explanation.—“Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value, and all other rights derived from the defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest.”

Section 45, clause 3.— * * * * * Such landholders and karnams shall furnish the said accounts, when required, for a period of not less than three years next preceding the year in which it is proposed to hold the sale.

Section 52.—All arrears of revenue other than revenue due on land may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for. The following explanation has to be added:—

Crosses are included in “Revenue due on land” above. Any money advanced for the purpose of cultivation or improvement of the land should also be included in “Revenue due on land”. That is, if they are not paid, the land may be sold for incumbrances.

There may be advances for or cesses which are not due as part of land revenue but which have been defined as such.

Identified land. You don't realise arrears by sale, but sale proceeds and the words “as above provided after sale” are unintelligible.

The last words refer to payment of arrears accruing after the attachment of the land, which may be paid after the sale, but the auction must be exact.

17/10/77

Paragraph 42 of the office-note in Current No. 7323.

Section 45, clause 3.— * * * * * Such landholders and karnams shall furnish the said accounts, when required, for a period of not less than three years next preceding the then current year.

Paragraph 43 of the office-note in Current No. 7323.

Section 52.—All arrears of revenue other than land revenue due to Government, all advances made by Government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in Revenue or Police duties, and all cesses lawfully imposed upon land, may be recovered in the same manner as arrears of land revenue under the provisions of this Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for.

Continuation from page 8.

10 The amount of ~~ortholability~~
of ~~any~~ ~~fees~~ ~~to~~ ~~pay~~ ~~any~~ ~~fees~~,
fees, costs or other charges
imposed under this Act.

Ans
207899
The act does not impose them,
but they are demanded under
this act, so the word demanded
shd be substituted for imposed.

25
20/1/91

comes arising
 if the defini-
 tion I have
 nearly pro-
 posed to the
 definition
 of land - rev.
 is approved

100
I agree that Civil Courts do not the
have as regards questions of the
ability ^{of land} to pay revenue, though Sec
Sec 158 of the Punjab Land
Revenue Act 1887 (the last of ad
Land. Rev. Codes) Civil Courts
do not decide as regards any claims
to free of revenue any land,
fisheries, or natural products
of land or water. I think it
be best if Sec 58 follows
158 of the Punjab Code as
words 4 of the matter referred to
it, thus: "No Courts of Civil Ju-
risdiction shall have jurisdiction
in matters where the Local Revenue
officers is empowered by
Act to dispose of, or take
possession of - ^{both} page 5." 5

In the B.D.'s Note it is suggested
that the Auction presents a lim-
itation, only in the case of pro-
ceedings caused by proceedings taken
under this Act, & that it may not
be held to apply to proceedings
thought to have been taken under
the Act, but as the Act did not
really authorize the Secretary
to issue orders. I do not think any
alteration need be made.

22
22 12/17
84
16/897

Supplementary Notes
with regard to Sec 58

1 Under Sec 38 of Madri Act II
of '64 application may be
made to a Collector to set aside
a sale on account of ma-
terial irregularity or mistake
which has caused substantial
injury. Under Sec 58 Civil Courts
are barred as regards any question
relating to the rates of
revenue imposed on land.

2 The decisions of the H.C. as
regards these matters are —

1 L R 1 Mad. 69. The High
Court has jurisdiction in original
suits against revenue officers for
acts ultra vires, though they
have supposed themselves au-
thorized.

1. E R 12 Mad 115. As the
mode of redressing an injury
is pointed out by a Statute,
the ordinary jurisdiction of
the Civil Courts is ousted
thereby.

2. 12 M D 117. The Civil Courts
may try suits as regards liability
to revenue assessed.

3. Apparently therefore the
Courts have no jurisdiction with
regard to mistakes or irregularities
in the sale, or the rate of
assessment imposed on land; but
they have jurisdiction with regard

to the
to the
with
of
william,
Sec 38
regarding
in civil
discre-
in any
any
with a
(Sec 38)

liability to pay revenue
with regard to things done
ultra vires though they purport
to be done under the Act.

It is even doubtful whether
Courts can cancel under the
present law can cancel only
on account of fraud. I propose
to give them this power expressly
I also propose to bar jurisdiction
with regard to other
revenue in the same way as it is
barred with regard to revenue
due on land.

JG
20/2/97

Am. in Comm. C.I.C.

Am. in H. B. H. C.I.C.

Amendment of Act II of 1864.

As directed by the Hon. Secy
H. B. H. a clause part of
the Act with the amendments
indicated by H. B. H. is submitted
for review.

Draft 20. H. B. H.

Am. amending act and now be prepared in due
form & sent to the Bd of Rev. & the H.C. for
consideration. In sending it, explain that the
last section is taken from

JG
20/9/97
20/9/97

C 11/9/97

EXISTING ACT.

Section 1, paragraph 3.—Public revenue due on land shall, for the purposes of this Act, be taken to include cesses or other dues payable to Government on account of water supplied for irrigation.

all cesses or other dues payable to Government on account of water supplied for irrigation,

the dues' Improvement Loans Act, 1883, and

whenever situated entered in the Government accounts as

ACT AS PROPOSED.

Section 1, paragraph 3.—Revenue due on land shall, for the purposes of this Act, be taken to include land tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses lawfully imposed on land, and loans made under the Agriculturists' Loans Act, 1884.

Provided that the cess payable to Government by a tenant of a landholder other than a holder of land on Ryotwar Settlement on account of water supplied for irrigation and tree-tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land.

"Holding" includes all the immoveable property held by one person wherever found,

singly or by two or more persons jointly.

Revenue is said to be "in arrear" when it has not been paid on or before the day appointed for its payment.

The word by the Collector must be written in the list of Land Revenue paid by Govt.

I should put S. 2 as follows:—

"All land in the holding of any person, the buildings thereon and the produce thereon shall be regarded as the security for the revenue due on any land held by such person."

W. J. G.

Section 2.—The land, the buildings upon it, and its products, shall be regarded as the security of the public revenue.

Section 3.—Every landholder shall pay to the Collector, or other officer empowered by him, to receive it, the revenue due upon his land, on or before the day, *et cetera*.

Section 5.—Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's moveable and immoveable property, or by execution against the person of the defaulter in manner hereinafter provided.

Section 2.—The land belonging to the person who is bound to pay the revenue due on land, the buildings upon it, and its products, shall be regarded as the security of the revenue due on land.

Section 3.—Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land, or otherwise, on or before the day, *et cetera*.

Section 5.—Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulters' moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

(c) by attaching and taking under Government management the defaulters' immoveable property;

(d) by the arrest and imprisonment of the defaulter.

This section the I submit as follows.

Where land in the holding of any person, the buildings upon it, and its products, shall be regarded as the security for the revenue due on land paid by him.

This is printed in the margin of the Bill. It is not to be printed in the Bill. It is not to be printed in the Bill.

Section 7.—Arrears of revenue shall bear interest at the rate of six per cent. per annum.

Section 8, clause 1.—The Collector or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter, a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrear fell due. The person employed to distrain, shall produce the writing which, if the arrear together with the batta due to him under section 53 be not at once paid, shall be his authority for making the distress, et cetera.

Section 7.—Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest all fractions of a couple of annas shall be taken as one rupee and all fractions of an anna of interest as one anna.

29
When this is already the law in Bombay. The Bill does not look at the same being adopted, if it is so.

Section 8, clause 1.—The Collector or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter, a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrear fell due. The person employed to distrain, shall produce the writing which, if the arrear together with the batta due under section 53 be not at once paid, shall be his authority for making the distress, et cetera.

Section 8, clause 4.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made by a written order prohibiting (a) in the case of the debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in

possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into the taluk and such payment shall discharge him as effectually as payment to the party entitled to the same.

Section 8, clause 5.—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required.

Every such officer may from time to time pay into the taluk, the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter.

a Government Treasury

a Government Treasury

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st
Section 16.—Where a defaulter may make a fraudulent conveyance of property to prevent the distress of arrears, any Civil Court, et cetera.

30
Section 8, clause 6.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the Collector from whom the notice issued.

Section 8, clause 7.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled.

Section 16.—Where a defaulter may make a fraudulent conveyance of property to prevent its distress for arrears, any Civil Court et cetera.

Section 23, clause 2.—If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorize its sale through a broker at the market rate of the day.

Section 24-A.—When the property sold is any moveable property to which the judgment-debtor is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.

Section 24-B.—When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.

Section 24-C.—When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to any person except the purchaser.

Section 24-D.—If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument or the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.

or registering any transfer of the share in favour of

Section 34.—All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due and interest thereon at the rate of six per cent. per annum, *et cetera*.

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue due on the date of sale, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the steps necessary for sale, and thereupon the sale shall be stayed.

Section 42.—All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, and if any balance shall remain after liquidating the arrears with interest, and the expenses of attachment and sale, and other costs due in respect of such arrears, it shall be paid over to the defaulter, unless such payment be prohibited by the injunction of a court of competent jurisdiction.

on account
and all payments of arrears
accruing after the attachment
of the land made

Section 34.—All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due and interest thereon at the rate of six and a quarter per cent. per annum, *et cetera*.

Section 37.—It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue due on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the necessary steps for sale, and thereupon the sale shall be stayed. At the end of the section add:

Explanation.—The word "sale" in this section includes a resale.

Section 38, clause 6.—It shall be competent to the Collector of the district, either of his own motion or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer's order.

Section 38, clause 7.—In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer.

or in case of appeal under the preceding sub-section, by the Divisional officer.

Section 42.—Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, any interest due on such arrears, the expenses of attachment and sale, and any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by a defaulter prior to sale, as well as any arrears realised by sale, are, as above defined, after sale, shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.

Section 42.—Add the following explanation:—

Explanation.—"Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value, and all other rights derived from the defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

Mr. W. H. M. 11/6/17

No. The word is intended to strike it out was here before I wrote the word

The H. H. object because it has been held that "sale" includes resale & hence the explanation is in the opinion unnecessary.

11/6/17

It will do good & no harm to insert it.

11/6/17

It will do good & no harm to insert it.

11/6/17

R

This will be done, if broken up by numbering as shown in sketch B. 11/6/17

11/6/17

All payments made by a defaulter prior to attachment of his property, all arrears realised by sale, and all other costs due in respect of such sale, as well as any arrears realised by sale, are, as above defined, after sale, shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.

This will do, I think

11/6/17

11/6/17

Section 45, clause 3.—
Such landholders and karnams shall furnish the said accounts, when required, for a period of not less than three years next preceding the then current year.

Section 52.—All arrears of revenue other than land revenue due to Government, all advances made by Government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in Revenue or Police duties, and all cesses lawfully imposed upon land, may be recovered in the same manner as arrears of land revenue under the provisions of this Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for.

Section 58.—No Court of Civil Judicature shall have authority to take into consideration or decide any question as to rate of land revenue payable to Government or to the amount of assessment fixed or to be hereafter fixed on the portions of a divided estate.

Section 45, clause 3.—
Such landholders and karnams shall furnish the said accounts, when required, for a period of not less than three years next preceding the year in which it is proposed to hold the sale.

and all fees or other dues payable by any person to or on behalf of the village servants employed on Revenue or Police duties

Section 52.—All arrears of revenue other than revenue due on land may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for. The following explanation has to be added:—

Explanation.—Receipts due to Government under special contracts are not revenue within the meaning of this section.

Sales under this section shall be sales only of the right, title and interest in the land.

Section 58.—
No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any revenue officer is empowered by the Act to dispose of, or take cognizance of, in the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under the Act; and in particular—
2. A Civil Court shall not exercise jurisdiction over any of the following matters, namely,
(i) The amount of land revenue assessed on any estate or charged in respect of any holding;
(ii) The amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;
(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;
(iv) The amount of any fees, fines, costs or other charges imposed under the Act.

Demanded

20/9/97 11/9/97 20/9/97

shall
BA

11/9/97

PT

Printed 25/9/97

9.0. 18845 of 6th Oct. 1897.

Draft of a Bill to further amend
Madras Act II of 1864, prepared in this
office will be re-^{ferred} to the Hon. the Judge
of the High Court. The Board of Revenue &
the Hon. the Advocate General ^{very early} for remarks.
Amended Section 58 of the Act has been taken
from Section 158, Punjab Act XVII of 1887.

6/10/97

List
to the Hon. the Judges of the High Court,
through the Judge
" Board of Revenue
" The Advocate General

18-10-97

50/5

MEMORANDUM.

Section 42 of Act II of 1864 (Madras) states that "all lands brought to sale on account of arrears of revenue shall be sold free of all encumbrances". This provision might be understood to mean that encumbrances on land were extinguished by a sale only when the arrear, for the recovery of which the sale was held, had accrued on the land sold. Owing to the difficulty, however, of maintaining an account of payment for each individual field, it has long been held that when a plot of land in a patta was sold for an arrear of revenue due in respect of that patta, the sale was free of encumbrances. The same view was taken by the High Court in the judgment reported in I.L.R., 8, Mad., 130.

2. There was, however, a doubt as to whether in order to extinguish encumbrances it was necessary that the land sold should be included in the patta under which the arrear had accrued. This doubt has been set at rest by the High Court (*vide* I.L.R., 13, Mad., 477). The High Court observed "no provision is made for the case of separate portion of a holding, on which the arrears had not actually accrued, being sold subject to encumbrances, and the only procedure prescribed for sales for arrears of revenue is that contained in section 42, which enacts that the lands shall be sold free of all encumbrances." The word "holding" appears to have been used in the above judgment in the sense of all lands held by the defaulter whether comprised in one patta or not.

3. After careful consideration the Government has arrived at the conclusion that the ruling of the High Court is not only according to what the law is, but according to what it ought to be. But as great authorities have understood the law differently, it has been thought desirable to amend it and make it clear. The opportunity is taken to remedy certain defects in the Act, which have been pointed out from time to time.

4. The points which have to be made clear are as follows:—

When land is sold for an arrear of revenue—

(1) If the revenue is due on land, the sale should be free of encumbrances wherever the land is situated, that is, whether in the village at which the arrear accrued or elsewhere; and

(2) If the revenue be of any other description, only the right, title and interest of the defaulter should be sold.

The amendment is carried out by the definition of holding in section 4 (2) of the draft Bill and by the revised sections 42 and 52.

5. To take up the draft Bill in the order of sections—

Section 3.—It is proposed to repeal section 4 of the Act and to simplify the definition of "arrear of revenue."

6. *Section 4.*—The definition of "public revenue" in section 1 of the Act only states that water-cess is included in the term; but it is necessary to know, in order to understand the exact effect of a sale of land for an arrear of revenue, what items are included under "land revenue." Section 4 (1) has accordingly been inserted.

7. *Proviso to section 4 (1).*—The definition of "revenue due on land" includes two items which, though connected with land, cannot be recovered by the sale of the particular piece of land with which they are connected. They are therefore excluded from the definition. They will be realised under section 52 of the Act as other revenue.

8. *Section 5.*—Section 2 of the Act has long been regarded as obscure and the High Court in I.L.R., 8, Mad., 131—3, after careful examination held that the land was the security for the revenue due on the entire holding. This is meant to be expressed clearly in the proposed section.

9. *Section 6.*—Section 3 of the Act, as it stands, refers only to revenue due on land (*vide* the words “due upon his land” in line 2 of the section). In order to make it applicable to other revenue also, a comma is proposed to be inserted after the word “revenue” in the second line of the section and the words “or otherwise” added after “his land.”

10. *Section 7.*—One mode of recovering arrears of revenue is by attaching and taking under Government management the defaulter's immoveable property. This is not specified in section 5 of the Act and it is not clear whether all the specified processes may be adopted at the same time. These defects will be removed by the proposed amendment.

11. *Section 8.*—It will facilitate calculation if the rate of interest in section 7 of the Act be fixed at $6\frac{1}{4}$ per cent. which will be equivalent to one pie in the rupee per mensem. With the permission of Government, the Board has remitted interest in two classes of cases. But the term “shall bear interest” in the section appears to be opposed to the remission.

12. *Section 9 (1).*—It is proposed to omit the words “to him” from the second sentence of clause (1) of section 8 of the Act. The framers of the Act perhaps presumed that the batta collected by each process-server would be paid to him. But, as a matter of fact, this has never been done. Process fees are collected according to certain rates, when processes are served by special batta peons, and constituted into a fund, from which these peons are paid fixed salaries.

13. *Section 9 (2).*—In 1880 the then Government pleader pointed out that the moveable property referred to in section 5 of the Act must be capable of actual seizure. The section no doubt allows of the defaulter's moveable property generally being sold; but this must be done “in manner hereinafter provided.” But the subsequent sections provide only for the sale of property distrained; and no process for the attachment of debts or choses-in-action of the defaulter is provided by the Act. The Board recommended and the Government agreed that the Act should be amended in this particular. The clauses proposed to be added have been taken with certain alterations from the Civil Procedure Code (*vide* sections 268, 272 and 273 of Act XIV of 1882).

14. *Section 10.*—This makes a mere verbal alteration.

15. *Section 11.*—The proposed addition has been taken from section 296 of the Civil Procedure Code.

16. *Section 12.*—The proposed clauses have been taken from sections 300 to 302 of the Civil Procedure Code.

17. *Section 13.*—The amendment in section 34 of the Act follows that in section 8 of the same (*vide* paragraph 11 above).

18. *Section 14 (1).*—Section 37 of the Act permits the tender of “the full amount of the arrears of revenue,” &c. But it is doubtful whether they include the arrears which accrued between the date of the sale notice and of the sale and for which a demand notice has not been issued; and whether the sale of land should be stayed when the latter arrears are not tendered. The proposed amendment is intended to make this point clear; and a similar amendment is proposed to be carried out in section 42 also (*vide* section 16 of the draft Bill).

19. *Section 14 (2).*—It has been held that the word “sale” occurring in the proviso at the end of section 37 of the Act includes a resale and that it is open to the defaulter to tender payment of the arrear up to sunset on the day preceding a resale of his land. This is made clear by the proposed explanation.

20. *Section 15.*—A good deal of correspondence has taken place on the subject of the confirmation of sales for arrears of revenue. It was at length settled after consultation with the Advocate-General that under section 3 of Regulation VII of 1828 Divisional officers might exercise the powers of the Collector and that in such cases

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 3180, dated 11th July 1896:—

READ—G.O., No. 58, Revenue, dated 7th January 1892.

Resolution—Mis. No. 3180, dated 11th July 1896.

In replying to the Government Order read above, the Board begs in the first place to express its great regret at the long delay which has occurred. It was at first proposed to take advantage of the opportunity offered by the suggested amendment of section 42 of Act II of 1864 to pass in review the various defects in other portions of the Act which the experience of more than a quarter of a century had brought to notice, and to this end a full office-note was prepared dealing with a considerable mass of correspondence. The subject then resolved itself into a revision of the whole Act and was perforce put on one side until the press of ordinary work should give time for due consideration of a matter of such magnitude. The fact that the Government had merely called for suggestions upon one point was afterwards lost sight of and the papers remained on the arrear list. The Board is bound to admit that the above explanation does not fully account for a delay of over four years, and can only reiterate its regret that any delay should have occurred.

2. The Board is not prepared to advocate any immediate change in the law as now defined in section 42 of Act II of 1864. It appears best to await until an opportunity occurs, and has been taken advantage of, to get the question under reference remitted to a Full Bench of the High Court for reconsideration. The Board will take the necessary action as soon as a suitable case is brought to notice.

3. As a general rule all lands held by a single individual or by a joint body of individuals in one village are included in a single patta, and in its Proceedings No. 127, dated 2nd May 1895, paragraph 6, the Board has ordered that in case of default the lands of defaulters situated in the village in which the arrear has accrued should be proceeded against before any attempt is made to recover the arrears by taking action against property situated elsewhere. The Board believes that even before the issue of the above order, sales were generally confined to lands held under the patta to which the arrears related and that in the few cases in which applications were sent to other taluks or districts the arrears were recovered as soon as notice No. 1 was issued. Lands held by a defaulter in another village of the same taluk may have been sold for arrears which did not actually accrue upon them, but such sales in villages outside the taluk must have been very few in number. It is to be regretted that statistics upon these points were not called for at the time, for the Board has now to rest its arguments mainly upon conjecture, and in view of the great delay that has already occurred, it is unwilling to await the collection of the necessary figures before submitting its reply to Government. The information will now be called for if Government so directs.

4. In the event of Government being of opinion that legislation is required, the following alterations to section 42 of the Act are suggested:—

(1) After the words “free of all encumbrances” add the following:—

“Provided that the arrears have accrued under the patta or grant in which the lands are comprised. In proceeding against any immoveable property not included in the patta or grant, the right, title and interest of the defaulter only shall be sold.”

(2) The word “and” which follows the expression “free of all encumbrances” shall be omitted.

(True Extract.)

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

To the Secretary to Government, Revenue Department,
with two enclosures returned.

their acts were subject to the fullest superintendence, control and revision by the Collector. It is proposed to embody this ruling in the Act to prevent any further uncertainty in the matter and to lay down also rules as to when limitation begins to run in each case.

21. *Section 16.*—The amendment of section 42 of the Act has already been adverted to. It is only necessary to explain the addition of the last sentence of the proposed section 42. This section, if amended as suggested, will apply only to items of revenue due on land; but there are certain items in pattas, such as fishery rents, which are not arrears due on land. Hence if a distinction should be made between sales free of, and subject to, encumbrances, it will be necessary to have two pattas—one for revenue due on land and the other for other revenue. As this will greatly increase work, it is proposed to meet the difficulty by the following simple expedient, viz., to insert a statutory direction at the end of section 42 to the effect that any payments made by defaulters shall be credited first to revenue other than revenue due on land. If there be any arrear under a patta it must, under these circumstances, be an arrear of revenue due on land; hence all sales for arrears under the land revenue patta will be free of encumbrances.

22. *Section 16—Explanation.*—The term "encumbrance" is not explained in the Act and there is some difficulty in deciding what are encumbrances. The proposed explanation is based partly on the rulings of the High Court in I.L.R., 11, Mad., 331 and 16, Mad., 145.

23. *Section 17.*—Under clause 3 of section 45 of the Act accounts have to be called for "for a period of not less than three years next preceding the then current year," i.e., if the lands are attached in fasli 1303, and three years' accounts are called for, they must relate to faslis 1300, 1301 and 1302. If, however, the preparation of the accounts and the correspondence with the Board take time and the sale therefore cannot take place before the year 1303 closes, then the accounts and the sub-division based thereon become valueless, as by the sanad of permanent settlement the years to be taken are the three years preceding the sale of the land, i.e., faslis 1301, 1302 and 1303. The proposed amendment will meet this difficulty.

24. *Section 18—Explanation.*—The Government considers that power should not be given by the Act to recover anything that is not "revenue."

25. *Section 12.*—Section 58 has, as already stated in the Government Order, been taken from the Punjab Land Revenue Code.

17th December 1897.

(Signed) G. S. FORBES,
Ag. Secretary to Government.

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G.O., No. 845, 6th October 1897.

OCTOBER.

Bill to further amend Madras Act II of 1864.

Referring to the Hon'ble the Judges of the High Court, the Board of Revenue and the Hon'ble the Advocate-General, for very early remarks, the draft of a —.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

ORDER—No. 845, Revenue, dated 6th October 1897.

Miscellaneous.

Draft of a Bill to further amend Madras Act II of 1864 prepared in this office will be referred to the Hon'ble the Judges of the High Court, the Board of Revenue and the Hon'ble the Advocate-General for very early remarks. Amended section 58 of the Act has been taken from section 158, Punjab Act XVII of 1887.

(True Extract,
fact.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Hon'ble the Judges of the High Court,
through the Judicial Department.
„ the Board of Revenue (Land Revenue).
„ the Advocate-General.

Exd. Shaik Karim.

50 Copies.

A

BILL

FURTHER TO

Amend Madras Act II of 1864.

WHEREAS it is expedient further to amend Madras Act II of 1864; It is hereby enacted as follows:—

1. This Act may be called the “Madras Revenue Recovery Act Amendment Act,” 1897, and it shall come into force on such date as the Governor in Council may, by notification, direct.

2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.

3. Section 4 is hereby repealed.

4. (1) For the third paragraph of section 1, the following shall be substituted:—

“ ‘Revenue due on land’ shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists’ Loans Act, 1884.

“ Provided that the cess payable to Government by a tenant of a landholder other than a landholder of land on ryotwar settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand, shall not be considered as revenue due on land.”

(2) In the same section, the following shall be added as the fourth and fifth paragraphs:—

“ ‘Holding’ includes all immoveable property wherever situated entered in the Government accounts as held by one person singly or by two or more persons jointly.”

"Revenue is said to be 'in arrear' when it has not been paid on or before the day appointed for its payment."

5. For section 2, shall be substituted the following section:—

"2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

6. In section 3, for the words "the revenue due upon his land" shall be substituted the words "the revenue, due upon his land, or otherwise."

7. For section 5, shall be substituted the following section:—

"5. Whenever revenue may be in arrear it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

(c) by attaching and taking under Government management the defaulter's immoveable property;

(d) by the arrest and imprisonment of the defaulter."

8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

9. (1) From clause 1 of section 8, the words "to him" shall be omitted.

(2) To the same section, the following shall be added as clauses 4, 5, 6 and 7:—

"Fourth.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made

by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

"Fifth.—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required."

"Every such officer may from time to time pay into a Government treasury the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter."

"Sixth.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Collector from whom the notice issued."

"Seventh.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled."

10. In section 16, for the words "to prevent the distress of arrears" shall be substituted the words "to prevent its distress for arrears".

11. To section 23, shall be added the following clause :—

“If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorise its sale through a broker at the market rate of the day.”

12. After section 24, shall be inserted the following sections :—

“24-A. When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.”

“24-B. When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.”

“24-C. When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to, or registering any transfer of the share in favour of, any person except the purchaser.”

“24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.”

13. In section 34, between the word “six” and “per cent.”, shall be inserted the words “and a quarter”.

14. (1) In section 37, after the words “to tender the full amount of the arrears of revenue” shall be inserted the words

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“due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not”.

(2) To the same section, shall be added the following explanation :—

“*Explanation.*—The word ‘sale’ in this section includes a re-sale.”

15. To section 38, shall be added the following clauses :—

“(6) It shall be competent to the District Collector, either of his own motion, or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer’s order”.

“(7) In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or in case of appeal under the preceding sub-section, by the District Collector.”

16. For section 42, shall be substituted the following section :—

“42. Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating (1) any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale, and all arrears adjusted as above provided from the sale-proceeds of attached property shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.”

“*Explanation.*—Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value, and all other rights derived from the

Further To

Amend Madras Act II of 1864.

Whereas it is expedient further to amend Madras Act II of 1864; it is hereby enacted as follows :-

1. This Act may be called the Madras Revenue Recovery Act Amendment Act 1897, and it shall come ^{into} force on such date as the Governor in Council may, by notification, direct.
2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.
3. Section 4 is hereby repealed.
4. (1) For the third paragraph of section 1 the following shall be substituted :-
 "Revenue ~~due~~ on land shall, for the purposes of this Act, be taken to include land tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists' Loans Act, 1884.

"Provided

defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

17. In clause 3, section 45, for the words "then current year" shall be substituted the words "year in which it is proposed to hold the sale".

18. For section 52, shall be substituted the following section :-

"52. All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on revenue or police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for."

"Explanation.—Receipts due to Government under special contracts are not revenue within the meaning of this section."

"Sales under this section shall be sales only of the right, title and interest of the defaulter."

19. For section 53, shall be substituted the following section :-

"53. (1) No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any Revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under this Act; and in particular—

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely :-

(i) The amount of land revenue assessed on any estate or charged in respect of any holding;

(ii) The amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;

(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;

(iv) The amount of any fees, fines, costs or other charges demanded under this Act."

Government Press

Regular
Miscellaneous No.

Regular Miscellaneous No.		
Year.	To whom given.	When taken

Between the Sections 7 and 8, please

insert the following Section:-

8.-In Section 7, between the words "six" and "per cent" shall be inserted the words "and a quarter".

and renumber the following sections.

It is understood that the proposed

sections quoted in the Bill were printed at the Govt. Press. If so, and if the type be standing, it may be utilized for printing the Bill.

for Registrar

30th Sept. 1897. Rev. Sectt.

4430/9

30/9/97

Provided that the cess payable to Government by a tenant of a landholder other than a landholder of land on Ryotwar Settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand shall not be considered as revenue due on land."

(2) In the same section, the following shall be added as the ^ufourth and fifth paragraphs :-

"Holding" includes all immovable property wherever situated entered in the Government accounts as held by one person singly or by two or more persons jointly."

"Revenue is said to be 'in arrear' when ~~it~~ it has not been paid on or before the day appointed for its payment."

5. For Section 2, shall be substituted the following section :-

" 2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as ~~the~~ the security for the revenue due on any land held by such person."

6. In section 3, for the words "the Revenue due upon ~~this~~ land" shall be substituted the words "the Revenue, due upon his land, or otherwise"

7. For section 5, shall be substituted the following section :-

" 5. Whenever revenue may be in arrear, ~~it~~ which shall be lawful for the Collector, or other officer empowered by the Collector

Collector in the same from giving
recover the arrear, together with inter-
est and costs of process, by all or
any of the undermentioned processes in
manner hereinafter provided:-

- (a) by the distraint and sale of de-
faulters' moveable property including
debts or choses in action ;
- (b) by the attachment and sale of
the defaulters' ~~re~~ immoveable property;
- (c) by attaching and taking under
Government management the defaulters'
immoveable property;
- (d) by the arrest and imprisonment
of the defaulter.

8. (1) From clause 1 of section 8,
the words "to him" shall be omitted.

(2) To the same section, the
following shall be added as clauses 4,
5, 6 and 7 :-

"Fourth. - In the case of (a) a
debt not secured by a negotiable instru-
ment, (b) a share in the capital of any
public Company or Corporation, (c) other
moveable property not in the possession
of the defaulter, the attachment shall
be made by a written order prohibiting
(a) ~~in~~ the case of debt, the creditor
from receiving the debt, and the debtor
from making payment thereof until the
further order of the Collector, (b) in
the case of the share, the person in
whose name the share may be standing
from transferring the same or receiving
any dividend thereon, (c) in the case
the other moveable property, the pers
in

in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government Treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

"Fifth - In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required."

"Every such officer may from time to time pay into a Government Treasury the portion so withheld and such payment shall discharge the Government of the Railway Company, as the case may be, as effectually as payment to the defaulter."

"Sixth - . If the property be deposit

"Sventh. - If the property be a decree passed by a Court, the attachment shall be made by a notice in writing to the Court to abstain from executing the decree until the notice is cancelled. A

10. To section 23, shall be added the following clause :-

11. After section 24, shall be inserted the following sections :-

When

^ Every Court receiving such notice shall give effect to the same until it is so cancelled "

"24 -B . When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser."

"24 - C. When the property sold is a share in a public Company or Corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from making any such payment to or registering any transfer of the share in favour of any person except the purchaser."

"24- D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary . And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself."

In

or any revenue created in it, him by or under

12. In sub-section 12

"six" and "per cent" shall be inserted the words "and a quarter".

13. (1) In section 37, after the words "to tender the full amount of the arrears of revenue" shall be inserted the words "due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not".

(2) To the same section, shall be added the following explanation :-

"Explanation - The word "sale" in this section includes a resale."

14. To section 38, shall be added the following clauses :-

" (6) - It shall be competent to the District Collector either of his own motion or on appeal from one or other of the parties concerned, to revise an order passed by a divisional officer under clause 2 or 3 of this section, provided that action is taken within 30 days from the date of the Divisional officer's order."

" (7) - In a suit ^{set} aside a sale of land, ~~the~~ ^{the} cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or in case of appeal under the preceding sub-section, by the District Collector."

15. For Section 42, shall be substituted the following section :-

Any

of the powers vested in it, ⁱⁿ particular -
holding of the defaulter may be brought
to sale on account of any arrears of
revenue due on land and shall be sold
free of all incumbrances. When such
land or other property or asset of a
defaulter is sold for an arrear of re-
venue whether revenue due on land or
otherwise, the sale proceeds shall be
applied to liquidating ~~(one)~~ any arrears
due by the defaulter on the date of
sale, whether such arrears have been
demanded under section 8 or section 25
or not, (2) any interest due on such
arrears, (3) the expenses of attachment
and sale, and (4) any other costs due
in respect of such sale: and if any
balance shall remain after liquidating
such arrears and charges, it shall be
paid over to such defaulter unless such
payment be prohibited by the injunction^c
of the Court of competent jurisdiction.
All payments made by or on behalf of a
defaulter prior to the attachment of
his property, all arrears realised bet-
ween attachment and sale ~~all~~ and all
arrears adjusted as above provided
from the sale proceeds of ~~the~~ attached
property shall be credited, first on
account of revenue other than revenue
due on land and then ^{to} revenue due on
land.

Explanation - Incumbrances shall
include mortgages and all charges on
land or under-tenures which impair its
value and all other rights derived from
the defaulter or his predecessors in
interest, but shall not include occu-
pancy

owers vested in it, and
company rights particular
on zamindari or
holding of the defaulter may be brought
to sale on account of any arrears of
revenue due on land and shall be sold
free of all incumbrances. When such
land or other property or asset of a
defaulter is sold for an arrear of re-
venue whether revenue due on land or
otherwise, the sale proceeds shall be
applied to liquidating(1) any arrears
due by the defaulter on the date of
sale, whether such arrears have been
demanded under section 8 or section 25
or not, (2) any interest due on such
arrears, (3) the expenses of attachment
and sale, and (4) any other costs due
in respect of such sale: and if any

balance shall remain after liquidat-
rears of land revenue under the provi-
sions of this Act, even though the recovery
thereof shall have been or may hereafter
be otherwise specially provided for."

"Explanation. - Receipts due to
Government under special contracts are
not revenue within the meaning of this
section."

"Sales under this section shall be
sales only of the right, title and in-
terest of the defaulter."

18. For Section 58, shall be sub-
stituted the following section :-

"58. - No Court of Civil Judicature
shall have jurisdiction in any matter
which the Local Government or any reve-
nue officer is empowered by this Act to
dispose of, or shall take cognizance of
the

owers vested in it, and as
company rights.

held by the defaulter on zamindari or
inam tenure, nor other rights in land
derived independently of the defaulter
or of his predecessors in interest."

16. In clause 3, section 45, for the
words "then current year" shall be sub-
stituted the words "year in which it is
proposed to hold the sale".

17. For Section 52 shall be substi-
tuted the following section :-

"52 - All arrears of revenue other
than revenue due on land and all fees
or other dues payable by any person to
or on behalf of the village servants em-
ployed on revenue or police duties may
be recovered in the same manner as ar-
rears of land revenue under the provi-
sion of this Act, even though the recovery
thereof shall have been or may hereafter
be otherwise specially provided for."

"Explanation. - Receipts due to
Government under special contracts are
not revenue within the meaning of this
section."

"Sales under this section shall be
sales only of the right, title and in-
terest of the defaulter."

18. For Section 58, shall be sub-
stituted the following section :-

"58. - No Court of Civil Judicature
shall have jurisdiction in any matter
which the Local Government or any reve-
nue officer is empowered by this Act to
dispose of, or shall take cognizance of
the

or any revenue or powers vested in it, him by or under this Act; and in particular—

2. A Civil Court shall not exercise jurisdiction over any of the following matters, namely,

(i) The amount of land revenue assessed on any estate ~~eh~~ or charged in respect of any holding;

(ii) The amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;

(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;

(iv) The amount of any fees, fines, costs or ~~teher~~ other charges demanded under this Act".

Note for the First Assistant

Papers connected with the Bill to further amend Madras Act II of 1864 together with 4 copies of proof of the Bill are herewith submitted. The Bill was carefully checked with the original notes of the Hon. Members received from Ooty today.

All the instructions therein contained have been correctly embodied in the Bill. Section 7 newly inserted by the First Asst. has also been put in.

ES
1/10/97

Note for the First Asst.

The papers connected with the amendment of Madras Act II of 1864 are herewith returned together with a spare copy of the

Bill as sent to the Press today. The Bill was accompanied by a note to the Supdt. asking him to treat the matter as very urgent. I am expecting the proof shortly.

In the meantime, I request that Smt. be favoured with a reply to my yesterday's note.

Pending this reply, I made no provision in the Press copy of the Bill in regard to sec. 7 about the enhancement of the rate of interest,

which
change

think I have made no mistakes in comparing the ms. with the proof. Please return all, with proof with revision inserted. I have numbered. If you have already received proof please get 2nd proof with the revision inserted etc.

Wk.

29/9/97

Bill

Further To

Amend Madras Act II of 1864.

Whereas it is expedient further to amend Madras Act II of 1864; it is hereby enacted as follows :-

1. This Act may be called the Madras Revenue Recovery Act Amendment Act 1897, and it shall come into force on such date as the Governor in Council may, by notification, direct.
2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.
3. Section 4 is hereby repealed.
4. (1) For the third paragraph of section 1 the following shall be substituted :-
"Revenue due on land, for the purposes of this Act, be taken to include land tax or cess (rent being included on land, tax on trade which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government or local authority for irrigation, all other cesses lawfully levied on land, and loans made under the Land Improvement Loans Act, 1865, the Agriculturists' Loans Act, 1875, or any other Act in that behalf made."

Provi

verment by a tenant or
other than a landholder or land on
lyotwar settlement on account of water
supplied for irrigation, and tree-tax
payable by a person other than the
holder of the land on which the trees
stand shall not be considered as reve-
nue and on land."

(3) In the same section, the
following shall be added at the fourth
and fifth paragraphs :-

"forming income and improve-
able property wherever situated, enter-
ed in the Government accounts as held
by one person singly or by two or more
persons jointly."

"Revenue is said to be 'in arrear'
when it has not been paid on or be-
fore the day appointed for its payment."

5. For Section 2, shall be substi-
tuted the following section :-

" 2. All land in the possession of any
person, the buildings thereon and the
produce thereof shall be regarded as
the security for the revenue due on
any land held by such person."

6. In Section 3, for the words
"Revenue due on his land" shall be
substituted the words "the revenue,
upon his land, or otherwise"

7. For section 5, shall be sub-
stituted the following section :-

" 5. Whenever revenue may be in-
~~which~~ ^{it} shall be levied for the
tor, or other officer empowered
collector

...the collection of
any of the herein mentioned processes in
manner hereinafter provided:-

(a) by the distraint and sale of de-
faulters' moveable property including
debts or choses in action;

(b) by the attachment and sale of
the defaulters' -- immovable property;

(c) by attaching and taking order
over and over and over the defaulters'
immovable property;

(d) by the arrest and imprisonment
of the defaulter.

For Section 7, the following shall
be substituted the following
Section 7: -

"Arrears of revenue shall bear
interest at the rate of six and a
quarter per cent per annum; but
it shall be competent to the B?
of revenue to remit by a General
or special order the interest due
in respect of any arrears. In
calculating interest all fractions
of a rupee of arrears shall be
taken as one rupee and all
fractions of an anna of interest
as one anna."

g. (1) From clause 1 of Section 8,
the words "to him" shall be omitted.

(2) To the same section, the
following shall be added as clauses 4,
5, 6 and 7 :-

"Fourth. - In the case of (a) a
bill not secured by a negotiable instru-
ment, (b) a share in the capital of any
public company or corporation, (c) other
moveable property not in the possession
of the defaulter, the attachment shall
be made by a written order prohibiting
(a) in the case of debt, the creditor
from receiving the debt, and the debt
from being paid thereon until the
written order of the collector, (b)
in the case of the share, the person in
whose name the share may be standing
from transferring the same or receiving
any dividend thereon (c) in the case
of the other moveable property, the
on

...the jurisdiction over
...the village in which
...the current account, and another copy of
...the same shall be sent in the case of
...the debt to the debtor, in the case of
...the share to the proprietor of the
...company or corporation, and in the case
...of the other movable property to the
...person in possession of the same. A deb-
...tor prohibited under clause (c) may pay
...the amount of his debt into a Govern-
...ment Treasury and such payment shall
...discharge him as effectually as payment
...to the party entitled to the same."

"Fifth.- In the case of the salary of a
...public officer or the servant of a Rail-
...way Company, his attachment shall be
...made by a written order requiring the
...officer, whose salary it is to discharge $\frac{1}{2}$
...the salary, to withhold every month such
...portion as the collector may direct un-
...der further orders. A copy of such or-
...der shall be pasted in a conspicu-
...ous part of the village in which the ar-
...ranged account, and shall be served on
...the officer so required."

"Sixth.- Every such officer not allow-
...ing to the pay into a Government
...Treasury the portion so withheld and
...such payment shall discharge the Govern-
...ment of the Railway Company, or the
...company may be, as effectually as payment
...to the creditor."

"Seventh.- If the property be
...in

the jurisdiction over
the property, the
or public officer, the attachment shall
be made by a notice to such court or
officer requesting that such property
and any interest or dividend becoming
payable thereon, may be held subject to
the further orders of the collector
from whom the notice is received."

"Seventh.- If the property be a decree
passed by a court, the attachment shall
be made by a notice in writing to the
court to withhold from discharging the
debtor until the decree is collected."

105. In section 10, for the words "to
prevent the distress of arrears" shall
be substituted the words "to prevent
its distress for arrears".

106. In section 25, shall be added the
following clause :-

"If the property to be sold be
a negotiable instrument, or a share in
a public company or corporation, the
collector may authorise its sale through
a broker at the market rate of the day."

124. After section 24, shall be in-
serted the following sections :-

"24-A. When the property sold
is any movable property to which the
debtor is entitled, subject to the
possession of some other person, the
delivery thereof to the purchaser shall
be made by giving notice to the person
in possession prohibiting him from de-
livering possession of this property to
any person except the purchaser."

^ Every Court receiving fresh notice
shall give effect to the same until
it is so cancelled."

"34 - C. When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the ~~present~~ purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to or ~~from~~ registering any transfer of the share in favour of any person except the purchaser."

In

the jurisdiction over
lower courts, and

(1) In Section 37, after the words
"to tender the full amount of the ar-
rears of revenue" shall be inserted the
words "due on the date of sale whether
such arrears have been demanded under
section 3 or section 25 or not".

(2) To the said section, shall
be added the following explanation :-

"Explanation - The word 'due' in
this section includes a revenue."

15
N. To Section 38, shall be added
the following clause :-

" (6). - It shall be competent to the
District Collector either of his own
motion or on appeal from one or other
of the parties concerned, to revise an
order passed by a Divisional officer
under clause 2 or 3 of this section,
provided that action is taken within 30
days of the date of the Divisional
officer's order."

" (7) - In a suit ⁵ set aside a sale of
land, ^{the} ~~to~~ cause of action shall be con-
sidered to arise on the date of confir-
mation of the sale by the Divisional
officer, or in case of appeal under the
preceding sub-section, by the District
Collector."

16
15. For Section 42, shall be sub-
stituted the following section :-

Any

the jurisdiction over
...
arrived independently of the
or of his predecessors in interest.

17. In clause 3, Section 45, for the
words "then current year" shall be sub

" 42 - Any land included in the
holding of the defaulter may be brought
to sale on account of any arrears of
revenue due on land and shall be sold
free of all incumbrances. When such
land or other property or asset of a
defaulter is sold for an arrear of re-
venue whether revenue due on land or
otherwise, the proceeds shall be
applied to liquidate (1) any arrears
due by the defaulter, the rate of
sale, whether such arrears have been
liquidated under Section 25
or not, (2) any interest under Section 25
arrears, (3) the expenses of such
sale, and (4) any other commitment
in respect of such sale: and if a
balance shall remain after liquidation
such arrears and charges, it shall be
paid over to such defaulter unless such
payment be prohibited by the judgment
of the court or competent jurisdiction.
All payments made by or on behalf of a
defaulter prior to the attachment of
his property, all arrears payable bet-
ween attachment and sale and all
arrear adjustments above provided
from the sale proceeds of the attached
property shall be credited, first on
account of revenue other than revenue
due on land and then to the defaulter.

the jurisdiction over
the revenue, the
to arrive independently of the
or of his predecessors in interest.

17. For clause 5, section 45, for the
words "then current year" shall be sub-
stituted the words "year in which it is
proposed to hold the sale".

18. For Section 52 shall be substi-
tuted the following section :-

"52 - All arrears of revenue or other
taxes revenue due on land or all taxes
or other dues payable by any person to
or on behalf of the village panchayats or
payers on revenue or police matters may
be recovered in the same manner as ar-
rears of land revenue under the provi-
sions of this Act, even though the recovery
thereof shall have been or may hereafter
be otherwise specially provided for."

Explanation. - Receipts due to
Government under special contracts are
not revenue within the meaning of this
section.

Sales under this section shall be
sales only of the right, title and in-
terest of the defaulter."

19. For Section 53, shall be sub-
stituted the following section :-

(1) "53. No court of civil jurisdiction
shall have jurisdiction in any matter
which the Local Government or any reve-
nue officer is empowered by this Act to
dispose of, or shall take cognizance of
the

Section 1, 1880, Act 10,

(i) The amount of land returned to the owner or any of his heirs or assigns or any of his assigns;

(ii) The amount of any money or other thing of value, which is or shall be paid or become due or payable under any contract for the time being in force;

(iii) Any claim to a share of any amount other than found to be due for the recovery of an amount of reward;

(iv) The amount of any fine, damages or other charges incurred under this Act".

and to
2

URGENT
Note for Mr. R. R. Sinsheimer

Transmit a Bill to Amend Act II of
186. Please check it very carefully
with the accompanying notes of
Hon. members (the returned) &
then send to press. In the copy
going to press please insert in the
places indicated the sections
lettered on the right hand ^{side} ~~from~~
of the manuscript book. Please
mark requisition to press urgent
& send me proof as soon as you can.

AR.
246967

2
sent to

Amend Madras Act ^{XX} II of 1864.

whereas it is expedient ^{further} to amend
Madras Act ~~XX~~ II of 1864;

It is hereby enacted as follows:—

1. This Act may be called the
Madras Revenue Recovery Act Amendment Act, 1873,
and it shall come into force on such date
as the Governor in Council may, by notifica-
tion, direct.

2. ~~Section 4~~ Unless there be something
repugnant in the subject or context, the
sections declared to be amended by this Act
are those of the Madras Act II of 1864.

3. Section 4 is hereby repealed.

4. (1) For the third paragraph of section 1
the following shall be substituted

(1-2) A

(2) In the same section, the following
shall be added as the fourth & ^{shall}
be ^{proposed to}
hold the sale"

2, shall be substituted the
section:—

(H.E.) D

6. In section 3, for the words "the revenue due upon his land" shall be substituted the words "the revenue, due upon his land, or otherwise."

7. For section 5, shall be substituted the following section.

(H.E.) E

8. From clause 1 of section 8, the words "to him" shall be omitted.

12. In the so

17. In the same section, the following shall be added as clauses 4, 5, 6 and 7.

9. In section 16, for the words "to prevent the distress of arrears" shall be substituted the words "to prevent its distress for arrears."

10. To section 23, shall be added the following clause:

(H.E.) J

after section 24, shall be inserted the sections:—

M; N

12. In section 34, for the words

"and a quarter" shall be inserted:

the words "six" and "per cent" shall be inserted the words "and a quarter."

13. (1) In section 37, after the words "to tender the full amount of the arrears of revenue" shall be inserted the words "due on the date of sale within such arrears have been demanded under section 8 or section 25 or not."

(2) To the same section, shall be added the following Explanation.

(H.E.) O

14. To section 38, shall be added the following clauses

(H.E.) P & Q

15. For section 42, shall be substituted the following section

(H.E.) R

16. In clause 3, section 45, for the words "this current year" shall be substituted the words "year in which it is proposed to hold the sale"

2, shall be substituted the

section 52 shall be substituted

ring section

(H.E.)S

For section 58, shall be ~~the~~ substituted

following section.

(H.E.)T

Note for the First Asst.

The Bill to amend Act,
of 1864, which was sent down
by the First Asst was checked
by me with the Sections and
the notes in the manuscript
book ~~which~~ which accompanied it.

The copy of the Bill to be
sent to the Press is getting
ready, and the manuscript
book will be returned to
the First Asst. tomorrow
as directed. I will try to send
the ~~copy~~ of the Bill soon
as possible.

Instructions are requested
on the following points:—

(1) In the Manuscript-book
the following section is proposed
to be substituted for Sec 7.

Sec 7. Arrears of Revenue
shall bear interest at the rate
of Six and a quarter per cent
per annum. But it shall be
competent to the Bd of Rev. to remit
by a general or special order
the interest due in respect of
any arrears. In calculating
interest all fractions of a pice

I believe this is already the
law in Bombay. The Bombay
Act might be looked up & the
same wording adopted if
it is so.

JH H.W.B.

In the Bombay Code, the
Govt fixes rate of interest
by a rule. (First Asst).

after the

sections:—

CH. IV

d.
27/9/97.

Go no 319
12-5-97

A
BILL

FURTHER TO

Amend Madras Act II of 1864.

WHEREAS it is expedient further to amend Madras Act II of 1864; It is hereby enacted as follows:—

1. This Act may be called the "Madras Revenue Recovery Act Amendment Act," 1897, and it shall come into force on such date as the Governor in Council may, by notification, direct.

2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.

3. Section 4 is hereby repealed.

4. (1) For the third paragraph of section 1, the following shall be substituted:—

" 'Revenue due on land' shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists' Loans Act, 1884.

" Provided that the cess payable to Government by a tenant of a landholder other than a landholder of land on ryotwar settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand, shall not be considered as revenue due on land."

(2) In the same section, the following shall be added as the fourth and fifth paragraphs:—

" 'Holding' includes all immovable property wherever situated entered in the Government accounts as held by one person singly or by two or more persons jointly."

"Revenue is said to be 'in arrear' when it has not been paid on or before the day appointed for its payment."

5. For section 2, shall be substituted the following section:—

"2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

6. In section 3, for the words "the revenue due upon his land" shall be substituted the words "the revenue, due upon his land, or otherwise."

7. For section 5, shall be substituted the following section:—

"5. Whenever revenue may be in arrear it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

(c) by attaching and taking under Government management the defaulter's immoveable property;

(d) by the arrest and imprisonment of the defaulter."

8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

9. (1) From clause 1 of section 8, the words "to him" shall be omitted.

(2) To the same section, the following shall be added as clauses 4, 5, 6 and 7:—

"Fourth.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made

by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from it giving over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same.”

“*Fifth.*—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required.”

“Every such officer may from time to time pay into a Government treasury the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter.”

“*Sixth.*—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Collector from whom the notice issued.”

“*Seventh.*—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled.”

10. In section 16, for the words “to prevent the distress of arrears” shall be substituted the words “to prevent its distress for arrears”.

11. To section 23, shall be added the following clause:—

"If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorise its sale through a broker at the market rate of the day."

12. After section 24, shall be inserted the following sections:—

"24-A. When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser."

"24-B. When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser."

"24-C. When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to or registering any transfer of the share in favour of any person except the purchaser."

"24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself."

13. In section 34, between the word "six" and "per cent.," shall be inserted the words "and a quarter".

14. (1) In section 37, after the words "to tender the full amount of the arrears of revenue" shall be inserted the words

"due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not".

(2) To the same section, shall be added the following explanation:—

"*Explanation.*—The word 'sale' in this section includes a re-sale."

15. To section 38, shall be added the following clauses:—

"(6) It shall be competent to the District Collector either of his own motion, or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within 30 days from the date of the Divisional officer's order."

"(7) In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or in case of appeal under the preceding sub-section, by the District Collector."

16. For section 42, shall be substituted the following section:—

"42. Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating (1) any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of the court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale, and all arrears adjusted as above provided from the sale-proceeds of attached property shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land."

"*Explanation.*—Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value and all other rights derived from the defaulter or his predecessors in interest;

but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

17. In clause 3, section 45, for the words "then current year" shall be substituted the words "year in which it is proposed to hold the sale".

18. For section 52, shall be substituted the following section:—

" 52. All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on revenue or police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for."

" *Explanation.*—Receipts due to Government under special contracts are not revenue within the meaning of this section."

" Sales under this section shall be sales only of the right, title and interest of the defaulter."

19. For section 58, shall be substituted the following section:—

" 58. (1) No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any Revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any Revenue Officer exercises any powers vested in it or him by or under this Act; and in particular—

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:—

(i) The amount of land revenue assessed on any estate or charged in respect of any holding;

(ii) The amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;

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6. In section 3, for the words "the revenue due upon his land" shall be substituted the words "the revenue, due upon his land, or otherwise."

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(b) by the action; defaulter's attachment and sale of the

(c) immovable property; Government attaching and taking under management the defaulter's

moveable property;

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8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

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by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

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14. (1) In section 37, after the words "to tender the full amount of the arrears of revenue" shall be inserted the words

"due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not".

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"52. All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on revenue or police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for."

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"Sales under this section shall be sales only of the right, title and interest of the defaulter."

"Section 53. shall be substituted—
"The Local Government or any revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under this Act; and in particular—

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:—

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“ ‘Revenue due on land’ shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists’ Loans Act, 1884.

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"2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

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" Provided that the cess payable to Government by a tenant of a landholder other than a landholder of land on ryotwar settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand, shall not be considered as revenue due on land."

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"Revenue is said to be 'in arrear' when it has not been paid on or before the day appointed for its payment."

5. For section 2, shall be substituted the following section:—

"2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

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7. For section 5, shall be substituted the following section:—

"5. Whenever revenue may be in arrear it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

(c) by attaching and taking under Government management the defaulter's immoveable property;

(d) by the arrest and imprisonment of the defaulter."

8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six *and a quarter* per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

9. (1) From clause 1 of section 8, the words "to him" shall be omitted.

(2) To the same section, the following shall be added as clauses 4, 5, 6 and 7:—

"Fourth.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made

by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (b) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

"Fifth.—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required."

"Every such officer may from time to time pay into a Government treasury the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter."

"Sixth.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Collector from whom the notice issued."

"Seventh.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled."

10. In section 16, for the words "to prevent the distress of arrears" shall be substituted the words "to prevent its distress for arrears".

11. To section 23, shall be added the following clause :—

“If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorise its sale through a broker at the market rate of the day.”

12. After section 24, shall be inserted the following sections :—

“24-A. When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.”

“24-B. When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.”

“24-C. When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to, or registering any transfer of the share in favour of, any person except the purchaser.”

“24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.”

13. In section 34, between the word “six” and “per cent.”, shall be inserted the words “and a quarter”.

14. (1) In section 37, after the words “to tender the full amount of the arrears of revenue” shall be inserted the words

“due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not”.

(2) To the same section, shall be added the following explanation :—

“*Explanation.*—The word ‘sale’ in this section includes a re-sale.”

15. To section 38, shall be added the following clauses :—

“(6) It shall be competent to the District Collector, either of his own motion, or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer's order”.

“(7) In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or in case of appeal under the preceding sub-section, by the District Collector.”

16. For section 42, shall be substituted the following section :—

“42. Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating (1) any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale, and all arrears adjusted as above provided from the sale-proceeds of attached property shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.”

“*Explanation.*—Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value, and all other rights derived from the

defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

17. In clause 3, section 45, for the words "then current year" shall be substituted the words "year in which it is proposed to hold the sale".

18. For section 52, shall be substituted the following section:—

" 52. All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on revenue or police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for."

" *Explanation.*—Receipts due to Government under special contracts are not revenue within the meaning of this section."

" Sales under this section shall be sales only of the right, title and interest of the defaulter."

19. For section 58, shall be substituted the following section:—

" 58. (1) No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any Revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under this Act; and in particular—

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:—

(i) The amount of land revenue assessed on any estate or charged in respect of any holding;

(ii) The amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;

(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;

(iv) The amount of any fees, fines, costs or other charges demanded under this Act."

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BILL

FURTHER TO

Amend Madras Act II of 1864.

WHEREAS it is expedient further to amend Madras Act II of 1864; It is hereby enacted as follows:—

1. This Act may be called the "Madras Revenue Recovery Act Amendment Act," 1897, and it shall come into force on such date as the Governor in Council may, by notification, direct.

2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.

3. Section 4 is hereby repealed.

4. (1) For the third paragraph of section 1, the following shall be substituted:—

" 'Revenue due on land' shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists' Loans Act, 1884.

" Provided that the cess payable to Government by a tenant of a landholder other than a landholder of land on ryotwar settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand, shall not be considered as revenue due on land."

(2) In the same section, the following shall be added as the fourth and fifth paragraphs:—

" 'Holding' includes all immovable property wherever situated entered in the Government accounts and by one person singly or by two or more persons jointly."

"Revenue is said to be 'in arrear' when it has not been paid on or before the day appointed for its payment."

5. For section 2, shall be substituted the following section:—

"2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

6. In section 3, for the words "the revenue due upon his land" shall be substituted the words "the revenue, due upon his land, or otherwise."

7. For section 5, shall be substituted the following section:—

"5. Whenever revenue may be in arrear it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

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(d) by the arrest and imprisonment of the defaulter."

8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

9. (1) From clause 1 of section 8, the words "to him" shall be omitted.

(2) To the same section, the following shall be added as clauses 4, 5, 6 and 7:—

"Fourth.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made

by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

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“24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.”

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“due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not”.

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7. For section 5, shall be substituted the following section:—

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(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;

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(c) by attaching and taking under Government management the defaulter's immoveable property;

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8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

9. (1) From clause 1 of section 8, the words "to him" shall be omitted.

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"Fourth.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made

by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

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"Sixth.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Collector from whom the notice issued."

"Seventh.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled."

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“If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorise its sale through a broker at the market rate of the day.”

12. After section 24, shall be inserted the following sections :—

“24-A. When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.”

“24-B. When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.”

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“24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.”

13. In section 34, between the word “six” and “per cent.”, shall be inserted the words “and a quarter”.

14. (1) In section 37, after the words “to tender the full amount of the arrears of revenue” shall be inserted the words

“due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not”.

(2) To the same section, shall be added the following explanation :—

“*Explanation.*—The word ‘sale’ in this section includes a re-sale.”

15. To section 38, shall be added the following clauses :—

“(6) It shall be competent to the District Collector, either of his own motion, or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer’s order”.

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16. For section 42, shall be substituted the following section :—

“42. Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating (1) any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale, and all arrears adjusted as above provided from the sale-proceeds of attached property shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.”

“*Explanation.*—Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value, and all other rights derived from the

defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

17. In clause 3, section 45, for the words "then current year" shall be substituted the words "year in which it is proposed to hold the sale".

18. For section 52, shall be substituted the following section:—

"52. All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on revenue or police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for."

"*Explanation.*—Receipts due to Government under special contracts are not revenue within the meaning of this section."

"Sales under this section shall be sales only of the right, title and interest of the defaulter."

19. For section 58, shall be substituted the following section:—

"58. (1) No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any Revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under this Act; and in particular—

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:—

(i) The amount of land revenue assessed on any estate or charged in respect of any holding;

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(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;

(iv) The amount of any fees, fines, costs or other charges demanded under this Act."

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BILL

FURTHER TO

Amend Madras Act II of 1864.

WHEREAS it is expedient further to amend Madras Act II of 1864; It is hereby enacted as follows:—

1. This Act may be called the “Madras Revenue Recovery Act Amendment Act,” 1897, and it shall come into force on such date as the Governor in Council may, by notification, direct.

2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.

3. Section 4 is hereby repealed.

4. (1) For the third paragraph of section 1, the following shall be substituted:—

“ ‘Revenue due on land’ shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists’ Loans Act, 1884.

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"Every such officer may from time to time pay into a Government treasury the portion so withheld and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the defaulter."

"Sixth.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Collector from whom the notice issued."

"Seventh.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled."

10. In section 16, for the words "to prevent the distress of arrears" shall be substituted the words "to prevent its distress for arrears".

11. To section 23, shall be added the following clause :—

“If the property to be sold be a negotiable instrument, or a share in a public company or corporation, the Collector may authorise its sale through a broker at the market rate of the day.”

12. After section 24, shall be inserted the following sections :—

“24-A. When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.”

“24-B. When the property sold is a debt not secured by a negotiable instrument, the delivery thereof shall be made by a written order of the Collector, prohibiting the creditor from receiving the debt or any interest and the debtor from making payment thereof to any person except the purchaser.”

“24-C. When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to, or registering any transfer of the share in favour of, any person except the purchaser.”

“24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.”

13. In section 34, between the word “six” and “per cent.”, shall be inserted the words “and a quarter”.

14. (1) In section 37, after the words “to tender the full amount of the arrears of revenue” shall be inserted the words

“due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not”.

(2) To the same section, shall be added the following explanation :—

“*Explanation.*—The word ‘sale’ in this section includes a re-sale.”

15. To section 38, shall be added the following clauses :—

“(6) It shall be competent to the District Collector, either of his own motion, or on appeal from one or other of the parties concerned, to revise an order passed by a Divisional officer under clause 2 or 3 of this section, provided that action is taken within thirty days from the date of the Divisional officer's order”.

“(7) In a suit to set aside a sale of land, the cause of action shall be considered to arise on the date of confirmation of the sale by the Divisional officer, or in case of appeal under the preceding sub-section, by the District Collector.”

16. For section 42, shall be substituted the following section :—

“42. Any land included in the holding of the defaulter may be brought to sale on account of any arrears of revenue due on land and shall be sold free of all incumbrances. When such land or other property or asset of a defaulter is sold for an arrear of revenue, whether revenue due on land or otherwise, the sale-proceeds shall be applied to liquidating (1) any arrears due by the defaulter on the date of sale, whether such arrears have been demanded under section 8 or section 25 or not, (2) any interest due on such arrears, (3) the expenses of attachment and sale, and (4) any other costs due in respect of such sale: and if any balance shall remain after liquidating such arrears and charges, it shall be paid over to such defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction. All payments made by or on behalf of a defaulter prior to attachment of his property, all arrears realised between attachment and sale, and all arrears adjusted as above provided from the sale-proceeds of attached property shall be credited, first on account of revenue other than revenue due on land and then to revenue due on land.”

“*Explanation.*—Incumbrances shall include mortgages and all charges on land or under-tenures which impair its value, and all other rights derived from the

defaulter or his predecessors in interest, but shall not include occupancy rights of tenants in lands held by the defaulter on zamindari or inam tenure, nor other rights in land derived independently of the defaulter or of his predecessors in interest."

17. In clause 3, section 45, for the words "then current year" shall be substituted the words "year in which it is proposed to hold the sale".

18. For section 52, shall be substituted the following section:—

"52. All arrears of revenue other than revenue due on land and all fees or other dues payable by any person to or on behalf of the village servants employed on revenue or police duties may be recovered in the same manner as arrears of land revenue under the provisions of this Act, even though the recovery thereof shall have been or may hereafter be otherwise specially provided for."

"*Explanation.*—Receipts due to Government under special contracts are not revenue within the meaning of this section."

"Sales under this section shall be sales only of the right, title and interest of the defaulter."

19. For section 58, shall be substituted the following section:—

"58. (1) No Court of Civil Judicature shall have jurisdiction in any matter which the Local Government or any Revenue officer is empowered by this Act to dispose of, or shall take cognizance of the manner in which the Local Government or any revenue officer exercises any powers vested in it or him by or under this Act; and in particular—

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:—

(i) The amount of land revenue assessed on any estate or charged in respect of any holding;

(ii) The amount of any other revenue or any cess, charge or rate assessed on an estate or holding under any enactment for the time being in force;

(iii) Any claim to set aside on any ground other than fraud a sale for the recovery of an arrear of revenue;

(iv) The amount of any fees, fines, costs or other charges demanded under this Act."

A

BILL

FURTHER TO

Amend Madras Act II of 1864.

WHEREAS it is expedient further to amend Madras Act II of 1864; It is hereby enacted as follows:—

1. This Act may be called the "Madras Revenue Recovery Act Amendment Act," 1897, and it shall come into force on such date as the Governor in Council may, by notification, direct.

2. Unless there be something repugnant in the subject or context, the sections declared to be amended by this Act are those of Madras Act II of 1864.

3. Section 4 is hereby repealed.

4. (1) For the third paragraph of section 1, the following shall be substituted:—

" 'Revenue due on land' shall, for the purposes of this Act, be taken to include land-tax or assessment assessed on land, tax on trees which is levied as a substitute for or in addition to the land assessment, all cesses or other dues payable to Government on account of water supplied for irrigation, all other cesses lawfully imposed on land, and loans made under the Land Improvement Loans Act, 1883, and the Agriculturists' Loans Act, 1884.

" Provided that the cess payable to Government by a tenant of a landholder other than a landholder of land on ryotwar settlement on account of water supplied for irrigation, and tree-tax payable by a person other than the holder of the land on which the trees stand, shall not be considered as revenue due on land."

(2) In the same section, the following shall be added as the fourth and fifth paragraphs:—

" 'Holding' includes all immoveable property wherever situated entered in the Government accounts as held by one person singly or by two or more persons jointly."

"Revenue is said to be 'in arrear' when it has not been paid on or before the day appointed for its payment."

5. For section 2, shall be substituted the following section:—

"2. All land in the holding of any person, the buildings thereon and the produce thereof shall be regarded as the security for the revenue due on any land held by such person."

6. In section 3, for the words "the revenue due upon his land" shall be substituted the words "the revenue, due upon his land, or otherwise."

7. For section 5, shall be substituted the following section:—

"5. Whenever revenue may be in arrear it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by all or any of the undermentioned processes in manner hereinafter provided:—

(a) by the distraint and sale of defaulter's moveable property including debts or choses in action;

(b) by the attachment and sale of the defaulter's immoveable property;

(c) by attaching and taking under Government management the defaulter's immoveable property;

(d) by the arrest and imprisonment of the defaulter."

8. For section 7, shall be substituted the following section:—

"7. Arrears of revenue shall bear interest at the rate of six and a quarter per cent. per annum; but it shall be competent to the Board of Revenue to remit by a general or special order the interest due in respect of any arrears. In calculating interest, all fractions of a rupee of arrears shall be taken as one rupee and all fractions of an anna of interest as one anna."

9. (1) From clause 1 of section 8, the words "to him" shall be omitted.

(2) To the same section, the following shall be added as clauses 4, 5, 6 and 7:—

"Fourth.—In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the defaulter, the attachment shall be made

by a written order prohibiting—(a) in the case of debt, the creditor from receiving the debt, and the debtor from making payment thereof until the further order of the Collector, (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, (c) in the case of the other moveable property, the person in possession of the same from giving it over to the defaulter. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property to the person in possession of the same. A debtor prohibited under clause (a) may pay the amount of his debt into a Government treasury and such payment shall discharge him as effectually as payment to the party entitled to the same."

"Fifth.—In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer, whose duty it is to disburse the salary, to withhold every month such portion as the Collector may direct until further orders. A copy of such order shall be fixed up in a conspicuous part of the village in which the arrear accrued, and shall be served on the officer so required."

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"Sixth.—If the property be deposited in, or be in the custody of, any court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Collector from whom the notice issued."

"Seventh.—If the property be a decree passed by a court, the attachment shall be made by a notice in writing to the court to abstain from executing the decree until the notice is cancelled. Every court receiving such notice shall give effect to the same until it is so cancelled."

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“24-A. When the property sold is any moveable property to which the defaulter is entitled, subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of this property to any person except the purchaser.”

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“24-C. When the property sold is a share in a public company or corporation, its delivery shall be made by a written order of the Collector prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the company from making any such payment to, or registering any transfer of the share in favour of, any person except the purchaser.”

“24-D. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company is standing, is required to transfer such instrument or share, the Collector may endorse the instrument of the certificate of the share or may execute such other document as may be necessary. And any endorsement made or document executed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed by the defaulter himself.”

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(iv) The amount of any fees, fines, costs or other charges demanded under this Act."