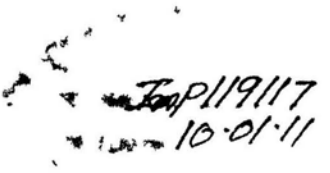
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No. 3310 of 1858.

Revenue Department

From the Revenue Commissioner for Alienations,

To the Chief Secretary to Government, Bombay.

Dated at Bombay, the 22nd October 1858.

Sir,—The Third Report from the Select Committee of the House of Commons on Colonisation and Settlement in India contains the evidence of Mr John Warden, lately a member of the Civil Service of this Presidency. This evidence, republished here, consists of a series of statements seriously impugning the proceedings of the Bombay Government, yet, withal, so incorrect, that were their effect confined to those really cognisant of all that has taken place, any explanation would be superfluous.

2. It must, however, be on every public ground so undesirable that these, or any similar erroneous statements, made before the British Legislature, should go forth uncorrected, that I can scarcely, I apprehend, be wrong in believing that Government will approve my affording the necessary explanation as succinctly as may be compatible with the extraordinary amount of correction absolutely required; for it must be borne in mind that at present, to all save a few high officials, Mr. Warden's evidence must appear to establish the greater portion of that which he endeavoured to impress upon the Committee.

3. As regards alienated revenue, there is scarcely a statement made by Mr. Warden, on any point of importance, which is not more or less capable of disproof; yet nearly every one of these points was fully and most elaborately discussed* during an inquiry in which, at the very close of his official career, Mr. Warden took a prominent part.

* Published in No. XXXI. of *Selections from the Records of the Bombay Government.*

4. Doubtful whether to notice Mr. Warden's replies *seriatim*, or to abstract his evidence under appropriate heads, I have determined on adopting the latter course. This Government will, I trust, approve.

5. The following, then, are the points in Mr. Warden's evidence which I shall notice: —

1*st*.—The nature of the Deccan Commission, which lasted from A. D. 1818 to 1826 (paragraph 6).

2*nd*.—The opinions of, and policy advocated by the Marquis of Hastings, Sir T. Munro, Mr. Elphinstone, and others described by Mr. Warden as administrators under whose rule no Native rights ran any risk of being violated or disregarded (paragraphs 7 to 11).

3*rd*.—Mr. Elphinstone's proclamation, issued on the breaking out of the war with the Peshwa (paragraphs 12 to 14).

4*th*.—The principles on which the settlement of the conquered territory was made by Mr. Elphinstone (paragraphs 15 to 17).

5*th*.—The circumstances which led to the enactment of Act XI of 1852, under which are adjudicated all claims to exemption from assessment in the Deccan, Southern Maratha Country, Khandeish, and all districts brought under British rule since A. D. 1817 (paragraphs 18 and 19).

6*th*.—The real character and effect of the Act (paragraphs 20 to 33).

7*th*.—The existing and former (under the Peshwa's Government) practice regarding succession by adoption, sale, mortgage, and in the female line, to exemption from assessment (Inams) granted hereditarily (paragraphs 34 to 50).

8*th*.—The nature of an Inam (paragraphs 51 to 53).

9*th*.—Mr. Warden's connection with past educational proceedings (paragraph 54).

10*th*.—Qualifications of Public Servants in the Native languages (paragraph 55).

The Nature of the Deccan Commission.

6. Mr. Warden has described Mr. Elphinstone as the first and Mr. Chaplin as the last Deccan Commissioner. There were, however, no others. For the first two years, or thereabouts, Mr. Elphin-

stone administered the territory with independent powers, which, on his departure to assume the Government of Bombay, were withdrawn by the Governor General, who, in a letter, dated the 15th July 1820, ordered,—

"The office held by Mr. Chaplin is, in his lordship's estimation, essentially different from that of the late Commissioner, or that of the former Residents at Poona.

"The late Commissioner was the actual and ostensible Governor of the country, acting under the general control of a distant and invisible supreme power, which exercised very little interference, and reposed due and implicit confidence in his judgment and local experience. Mr. Chaplin is acting under the immediate superintendence and minute control of a proximate Presidency, and it must be universally understood throughout the country that the ruling power accompanied Mr. Elphinstone to the seat of his Government"

The Opinions and Policy of the Marquis of Hastings, *Mr.* Elphinstone, *Sir* T. Munro, *and others mentioned by Mr.* Warden.

7. When Lord Hastings was Governor General, Lord Metcalf the Governor General's Chief Secretary, Sir T. Munro Governor of Madras, and Mr. Elphinstone Governor of Bombay, there never was (Mr. Warden has stated) "any fear of our being unjust or ungenerous to the Natives" (*Q.* 6050); yet of the proceedings of the Bombay Government connected with exemption from assessment, which Mr. Warden terms unjust and ungenerous, most are, in reality, those of Mr. Elphinstone himself, and not one is based on any but the views and principles strongly and distinctly enunciated by one or all of the statesmen named by Mr. Warden.

8. The Marquis of Hastings recorded the following opinion the 21st September 1815:—

"Of all subjects of taxation, I should conceive the profits of rent-free lands the most legitimate. The holders of land of this description are at present exempted from all contribution, whether to the local police or Government by which they are protected, or to the public works from which their estates derive equal benefit with the rest of the community. They are indebted for the exemption either to the superstition, to the false charity, or to the ill-directed

favour of the heads of former Governments and other men in power, and have little personal claim upon ourselves for a perpetual exemption from the obligations they owe as subjects. Most of the tenures may be considered invalid; indeed the scruples which have saved the whole of these lands from indiscriminate resumption have given cause to admire as much the simplicity as the extreme good faith of all our actions and proceedings."

9. Lord Metcalf's opinions were yet stronger. Sir T. Munro was for a time the chief authority in the district (the Southern Muratha Country) specially referred to by Mr. Warden, and during that period recorded opinions which will be presently given at length (paragraphs 53 and 54). Suffice it for the present to state that Sir T. Munro's statement, of which Mr. Warden, in reply to a question (No. 6231) put to him by Mr. Mangles, declared he had no knowledge, was specially brought to his (Mr. Warden's) notice* only one year before he left India (in 1853). during a discussion regarding errors previously committed by him as Agent for Sirdars, and by his successor in office, my exposure of which errors he had endeavoured, though unsuccessfully, to impugn.

10. And so with regard to Mr. Elphinstone, whose opinion (see paragraph 35) was, that in the extinction of families enjoying exemption from assessment must future increase of revenue be looked for; and yet did Mr. Warden, after informing (*Q.* 6052) the Committee that he had served under, and frequently sat by the side of Mr. Elphinstone, declare (*Q.* 6075) Mr. Elphinstone's settlement, proclamation, and policy to have been violated and vitiated by the subsequent non-recognition (as giving a claim to enjoy such exemption) of adoptions in those families, such recognition being, in truth, the conversion of hereditary into permanent grants,—a proceeding from the very first so strongly deprecated by Mr. Elphinstone.

11. Again, the distinction between the older provinces and those conquered from the Peshwa was drawn by Mr. Elphinstone, and by no one else. Mr. Warden has described this act as one which deprived the Peshwa's subjects of privileges, excluded them from the courts of justice, deprived them of the means of enforcing their claims, &c. (*Q.* 6068). I shall by-and-bye again (see paragraph 19)

* Page 21 of No. XXXI. of the published *Selections from the Records of Government.*

refer to this act, which I here notice merely to expose the inconsistency which at once holds forth Mr. Elphinstone as a model (as, indeed, he was) of administrative power and excellence, and, at the same time, decries as iniquitous, and in the last degree oppressive, acts of the very man just before held up to admiration as one under whose rule there could be no "fear of our being unjust or ungenerous to the Natives."

Mr. ELPHINSTONE'S *Proclamation.*

12. "The Peshwa (Mr. Warden informed the Committee) abdicated in favour of the British Government in A. D. 1818, when Mr. Elphinstone issued a proclamation promising an equitable adjustment of private claims" (*Q.* 6060). That the Peshwa never abdicated, will be seen from the proclamation, which I am about to quote, and that the proclamation had nothing whatever to do with any abdication, nominal or real, dates will equally prove. On the 1st June 1818, the ex-Peshwa, Bajee Rao, then a fugitive in the Khandeish jungles, delivered himself up to Sir John Malcolm, on that officer's pledge that he should receive during his life-time an enormous annual stipend—an arrangement confirmed, but severely condemned, by the Governor General. It may be this transaction which Mr. Warden has described as an abdication, though four months previously, on the 11th February 1818, Mr. Elphinstone had proclaimed as follows:—

> "By these acts of perfidy and violence, Bajee Rao has compelled the British Government to drive him from his musnud, and to conquer his dominions."

The proclamation,* after detailing the armed forces set in motion, went on to say,—"In a short time, no trace of Bajee Rao will remain"; and then, after describing the assignment of territory to the Raja of Sattara, declared,—"The rest of the country will be held by the Honorable Company."

13. The only portion of the proclamation having any reference to the holders of alienated revenue is the following:—

> "All Wuttuns and Inams (hereditary lands), Wurshasuns (annual stipends), and all religious and charitable establishments, will be protected, and all religious sects will be tolerated, and their customs maintained, as far as is just and reasonable."

* *Book of Published Treaties*, pages 541, 542.

14. It may not be out of place to draw attention to one other portion of Mr. Elphinstone's proclamation, affecting, it should be remembered, every landholder throughout a territory which, up to that time, had been an independent Native sovereignty:—

"Wuttundars and other holders of lands are required to quit his standard, and return to their villages, within two months from this time. The Zemindars will report the names of those who remain, and all who fail to appear in that time shall forfeit their lands, and shall be pursued without remission until they are entirely crushed."

Mr. ELPHINSTONE'S *Settlement.*

15. I now come to Mr. Elphinstone's settlement, the principles of which have been on some material points erroneously described by Mr. Warden, who left the Committee to understand that Mr. Elphinstone confirmed the title of each holder of alienated land, or recipient of an allowance, found in possession. So far, however, from doing this, Mr. Elphinstone specially avoided it, and expressly directed his subordinates to avoid it likewise. He was, better probably than any other British officer, aware of the necessity of caution; and one of his very first acts was to impress upon his subordinates that no Inam not actually held at the breaking out of the war was to be restored; that all the resumptions of Bajee Rao, during whose reign scarcely an alienation had remained untouched, were intended to be final; and that all alienations whatever were to be continued, with the express intimation, or on the express understanding, that such continuance conveyed no recognition of title, which would be adjudicated at a future period. On the 3rd April 1858 Mr. Elphinstone wrote,—

"All lands allotted to charitable and religious purposes must be continued, and the title ought not for the present to be strictly examined. The same applies to Inams, where present possession ought to be a sufficient presumption in favour of the holder's title until there shall be time for more regular investigation."

And again, on the 1st July following, he ordered,—

"No formal confirmation should be given until an investigation has taken place."

A year later, the foregoing principles were enunciated with still greater clearness and precision.

On the 14th June 1819, Mr. Elphinstone thus wrote to the Collector of Khandeish :—

"Adverting to the Inams said to be confirmed, I beg to be favoured with an explanation of the manner in which the confirmation has been conferred. It was my intention only to release Inams for the present, and not to enter into any engagement that implied their being continued, until there should be an opportunity of carefully examining the titles. I think it probable you will have acted in this spirit; but as everything resting at all on the faith of a public officer must be enforced, I am anxious to know the exact nature of the expectations held out in this case."

And the Collector on the 22nd of the said month replied :—

"I have the honour to acknowledge the receipt of your letter of the 14th instant, and to acquaint you that in making use of the expression 'confirmed,' with regard to Inams, it ought more properly to have been 'continued.' All holders of Inams are expressly told that the present is only a temporary arrangement, to prevent their losing by being kept out of their Inams till a final investigation can be made; and instead of getting a new sunnud, they merely receive an order on the Mamlutdar to restore to each his Inam which appears in the Dufturs, provided it shall have been enjoyed up to the period of the occupation of the country."

16. Thus, while every consideration was shown to the people of a newly conquered territory, and to those who had so recently occupied its high places, the greatest care was taken to avoid hasty pledges, the sure source of embarrassment at a future day. Mr. Elphinstone's arrangements on these points were as far-sighted as they were humane; their natural consequence, however, was to admit to temporary exemption from assessment, and to temporary possession, as Inamdars, persons, many of whom had not a shadow of title. As a matter of course, those who had just before helped themselves in the general scramble and the confusion which characterised the last few months of the Peshwa's and the commencement of British rule, were, in most instances, allowed to retain, *pending inquiry*, that which they had seized.

17. It is therefore, I submit, clear, that while Mr. Warden correctly enough stated that "every promise held out by the proclamation of Sattara was fulfilled without reserve or modification," his

statement immediately following (*Q.* 6167), that under that fulfilment, "a great number of hereditary rights to land were confirmed," is most erroneous; as is, of necessity, his next assertion that these confirmed rights "are fast disappearing in the Bombay Presidency." Not a single title to Inams, or to anything else formally confirmed by Mr. Elphinstone, or by any subordinate officer acting under Mr. Elphinstone's instructions, has ever been questioned, and the very first provision (Rule 1 of Schedule B) of the Inam Commission Act (XI. of 1852) is to the effect that every such confirmation shall be respected and held inviolable, and every such confirmation has been respected accordingly.

The Grounds on which Act XI. of 1852 *was passed.*

18. The thorough inquiry and formal confirmation, the necessity of which at a later period Mr. Elphinstone had at the conquest of the country recognised and pointed out, did not take place either under his own Government or for many years afterwards. Partial inquiries, indeed, went on, but without any system, and with most unsatisfactory results. The little that was done was done badly*; the revenue suffered, and the people were harassed; and all without the attainment of the desired end. The cause of the failure a few words will explain. The inquiry was expected to be made by Collectors overburdened with other regular duties, and, generally speaking, without any sufficient knowledge of the records of the Muratha Government, by which alone claims to exemption from assessment can be tested; the records themselves were, moreover, greatly neglected for many years after the abolition of the Deccan Commission, and so remained until the appointment of the Inam Commission in 1843. The consequence was inevitable,—that which was done was left to Native officials, who made the most of the opportunity. The Inam Commission inquiries have shown that fraud and misrepresentation were, beyond question, generally the essentials to the successful prosecution of a claim, and it is not surprising that such a system should have placed good and bad titles on much the same footing, and should have given rise to great

* "Though every Collector has assented to the necessity of a thorough investigation, and some have even commenced to make one, none such was ever completed, nor was even any general register of the alleged titles of the lands held as Inam ever drawn up; the only one commenced having been abandoned before completion."—*Vide* page 58 No. XXX. of *Selections from the Records of Government*, published in 1856.

distrust. In short, the inefficiency of the machinery by which the inquiry was from year to year nominally carried on at length worked its own cure, and obliged the Government to adopt effective measures for the protection of the public revenue, and the interests of those having just claims upon it.

19. Such were the circumstances under which Government determined to appoint a special Commission, not only to prevent the improper alienation in perpetuity of the public revenue, but equally to confirm all *bonâ fide* alienations. The whole of the proceedings explanatory of the origin of the Inam Commission were in 1856 published in No. XXX. of the *Selections from the Records of Government*, in which will be found at length the reasons which led Government to believe it impossible to effect any settlement under the law found so signally inoperative and insufficient in the old provinces, in which the state of the alienations was, when the Inam Commission was appointed, and is indeed even now, far worse than that with which Government have had to deal in the territory administered by Mr. Elphinstone as Commissioner. No more complete failure can be conceived than that which has attended the operation of the law applied to the old provinces. Mr. Elphinstone was well aware of its inapplicability to the new ones, when by Regulation XXIX. of 1827 he exempted them from its operation, and Government would indeed have been blind had they, after fifteen years' experience of the correctness of Mr. Elphinstone's opinion, deliberately ignored it.

The real Character of Act XI. of 1852.

20. There is probably no portion of Mr. Warden's evidence so incorrect as that which purports to be a description of the proceedings of the Inam Commission, and of the enactment (XI. of 1852) by which those proceedings are regulated. Mr. Warden states that Government, by the enactment of 1852, threw upon those claiming exemption from assessment the *onus* of proving their right to enjoy it. Now it is well known that throughout the *old* provinces, in which titles to Inams have been and still are adjudicated by the ordinary Courts, proof has always been thrown upon the alleged Inamdar; and one consequence of this has been the great difficulty experienced in dealing with the enormous alienations of land revenue in Guzerat, the holders of which are, for the most part, notoriously unable to prove any

enjoyment whatever under the former Government, and would, therefore, had the law been strictly and generally applied, have long ago ceased to hold anything. But throughout the Deccan, Khandeish, and Southern Muratha Country, it is otherwise. Act XI. of 1852 provides,* that whenever there may not be evidence forthcoming to prove the exemption claimed *not* to have been allowed by the former Government, the claimant's mere assertion must be accepted, and prescriptive title held proven. Thus Mr. Warden first erred in declaring that the Inam Act throws upon the Inamdars the *onus probandi*, then incorrectly described the law in force in the old provinces, and finally based on the foregoing double error a comparison condemnatory of the Act XI. of 1852.

21. How very materially the Committee have been misinformed will be apparent from a perusal of the following extract from the Inam Commissioner's letter (dated the 5th July 1854) to Government, reporting the progress made in the adjudication of titles to exemption during the official year 1853-54 :—

> "There is a feature in the cases in the Southern Muratha Country which seems deserving of special notice, and stands out in strong contrast with the cases of holders in Rutnagherry and the Deccan, viz. the scantiness of the documentary evidence in the possession of claimants, which shows how perfectly helpless they would be in substantiating their claims against Government were the *onus probandi* thrown, as in the old provinces, upon their shoulders, and they left to procure evidence from the district and village officers, and others, in the best way they might. But under Act XI. of 1852 the *onus* is placed on the Inam Commission, one of whose chief duties has become to collect and obtain the best evidence procurable, and to apply it on either side with the view to establish the truth, and decide accordingly."

22. As the best and clearest method of placing the facts before those whose only account and knowledge of the proceedings of the

* The Act says,—"If there be not evidence forthcoming to disprove a claimant's assertion that his holding has been undisputedly enjoyed for the number of years and descents requisite to fulfil the conditions of Rules 3 and 4 respectively, his prescriptive right shall be admitted." The same principle is reiterated in the clauses applicable to religious Inams, and Wuttuns or service Inams. **See Provision 2 of Rule 4, 5 of Rule 7, and 4 of Rule 8, of Schedule B of the Act.**

Inam Commission have been derived from Mr. Warden's statements, I will endeavour succinctly to describe the method of procedure in the old districts (viz. the six Guzerat and Konkun Collectorates), in which the *onus probandi* is thrown on each claimant, and then to contrast with it the method followed under Act XI. of 1852, which declares (Provision 2 of Rule 4 of Schedule B) that, in the absence of evidence to disprove a claimant's mere assertion, that assertion shall be admitted as proof.

23. The Committee entrusted with the duty of framing the Regulations, when forwarding to Government the original draft of Regulation I of 1823 (with letter to Government dated the 6th September 1821), which, with some modifications, afterwards became the Regulation (XVII. of 1827), under the provisions of which all claims to exemption from assessment are adjudicated in the old districts, remarked as follows :—

> "We have judged that it may safely be assumed as a principle, that all land is originally liable to be assessed for the public revenue, and that as exemption from public revenue is an exception from the general rule, in all questions originating in such claims to exemption, it is not incumbent on the Government to prove the right to tax, but on the person claiming the exemption to prove the right to such exemption."

24. By Regulation XVII. of 1827, the person claiming exemption must prove its past enjoyment for the period laid down by law, which period is fixed in some cases at thirty, in others at sixty years. Failing the production of clear proof of this, the land is liable to assessment.

25. But under Act XI. of 1852, the claimant need not adduce a particle of proof of any description. He need not, indeed, even make any assertion. Whether he chooses to say that all he knows is that his family have enjoyed the exemption for centuries, or to say that he knows nothing whatever about the matter, or to say nothing at all, the result is one and the same. His title is formally confirmed, unless Government have records of the former rule proving the exemption not to have been allowed.

26. Surely it is difficult to conceive any more complete and absolute relinquishment of the undoubted right of the State to demand

from those claiming exemption, proof of their title to enjoy it, than that described in the last paragraph.

27. Throughout Mr. Warden's evidence, I find the Inam Act (XI. of 1852) described as replete with provisions of the most oppressive and unjust character, brought into existence for the first time by that enactment. The fact, however, is, that while the Act contains several alterations in favour of alleged Inamdars, it does not, with one exception, contain a single clause increasing the stringency of the rules long previously (for twelve years) in force. The single exception is to be found in the clause (Provision 2 of Rule 2 of Schedule B) which provides that no tenure shall be recognised, the conditions of "which cannot be observed without a breach of the laws of the land, or the rules of public decency."

28. Not more correct is the statement (*Q.* 6074) that—

> "The only liberal provisions in this Act XI. of 1852 are to be found in Sections 7 and 8 of Schedule B, in favour of mosques, idolatrous temples, Mahomedan priests, and Hindoo astrologers, which are followed by a miserable compensation to the widows of those deprived of their inheritance under the operation of the Act."

Could any one from this description possibly suppose the "liberal provisions" thus sneered at to be, as they really are, simply those made when the country became British, guaranteed by Mr. Elphinstone's proclamation, and scrupulously observed from that day to the enactment of Act XI. of 1852; or could any one possibly understand the Act to have been, as it really was, passed expressly to determine the true character of that claimed as inheritance, and to confirm everything found actually to be as represented, putting an end only to exemption never allowed by the Native Government,—even then (Rule 6 of Schedule B) depriving none found in actual enjoyment save those proved to have obtained it by fraud committed *after* the introduction of British rule, and expressly declaring (Provision 1 of Rule 9 of Schedule B) the widow of each holder of a real Inam, deceased without male issue, to be by right the sole heir, during whose life-time "the Inam cannot be regarded as having lapsed to Government"? Mr. Warden, throughout his evidence, ignores the fact that Act XI. of 1852 was passed to secure the *continuance*, not the resumption, of every real Inam, and every alleged Inam the

reality of which could not be disproved by the best and clearest evidence and that it provides for assessment only where this evidence may be forthcoming,—even these holdings, however, not being assessed during the life-time of the incumbent, except in cases of extreme fraud.

29. The Committee were informed (*Q.* 6075) by Mr. Warden, that while upwards of 100,000 claims to exemption from assessment remained for adjudication, seven thousand only had been disposed of; but they were not told, that of this large number about two-thirds, being service holdings, must and will be dealt with summarily. Immediately afterwards, "the Inam Commission Courts" were described as moving "at a snail's pace," but nothing was said of the working of the ordinary Courts, to which the Inam inquiry ought, Mr. Warden endeavoured to impress on the Committee, to have been made over. The following is Mr. Warden's own description (letter dated the 1st December 1851, No. 276), as Judicial Commissioner, of the working of these ordinary Courts:—

> "In case No. 11,148 of 1858, filed on 27th November 1850, the plaintiff sued to recover 8 annas and 9 pies* only, and this includes both principal and interest. The defendant absented himself after signing the summons, and two witnesses on the part of the plaintiff were examined, one after having been twice served with summonses, and been twice subjected to warrants, and the other after having been twice served with summonses, then subjected to four warrants; then once more summoned, and at last after two more warrants produced in Court. A third witness was summoned five times to no purpose. This case was postponed and resumed twenty-three times, even after warrants had been issued, and was still pending on the 17th October 1851, when I inspected the proceedings; the claimant having already waited between ten and eleven months to recover 8 annas and 9 pies, though the defendant had absented himself from the commencement, either in contempt, or to let the case go by default, and the plaintiff had supported his demand by the evidence of two witnesses."

30. Nor did Mr. Warden, when urging before the Committee that throughout the Deccan, Khandeish, and Southern Muratha Country, the trial of alienation claims ought to have been left to the ordinary Courts, explain that at the end of five-and-thirty years Go-

* About one shilling.

vernment had found (see paragraph 19) the ordinary Courts utterly unequal to the task imposed upon them in the old provinces, and had learned* that in one (Surat) alone of the six Collectorates, sixteen thousand claims had been brought on the files, and were likely for ever to remain there, while in another Collectorate (Broach), of three hundred cases brought during three years on the files, *three* only had been disposed of.

31. Mr. Warden endeavoured to impress (*Q.* 6074) on the Committee the impolicy, injustice, and ill-effects of depriving men "of their landed estates." But from first to last, whether under the operation of the Inam Commission, or of the rules previously in force (which, collected, form, as has been in paragraph 27 explained, the Inam Act), occupancy has never been interfered with, and this ought to have been known to Mr. Warden, for he was a member of the Government at the time (27th May 1854) the following circular instructions were issued to all revenue officers:—

> "The Governor in Council does not conceive it probable that any of the local officers can so mis-read either Act XI. of 1852 or Regulation XVII. of 1827 as to suppose that interference with actual occupation is allowable. All that the adjudicating authority (Inam Commissioner or Collector) can try is the title to exemption from assessment."

The following remarks were made so long ago as 1821 by the Regulation Committee, when commencing the task of framing a law for the enforcement of revenue demands, including those on account of land improperly held exempt from assessment:—

> "The operation of assessing lands which, from neglect or other cause, had not previously been assessed, has sometimes been called the *resuming* of Government land. The term is incorrect, and leads to mis-conception, conveying the notion of a violent act. The land is not *resumed*. It remains with the occupant, who is called upon for a tax, payable by him, in common with all subjects of the State, who cannot exhibit a special title of exemption, either by grant or prescription."

32. But deprivation of inheritance by legal process has taken place, and has very extensively taken place, though not under the

* No. XXX. of the published *Selections from the Records of Government.*

operation of the Inam Commission. It is by the process of the ordinary Courts, by which all claims to enjoy exemption from assessment *(heretofore synonymous with exemption from taxation)* should have been, according to Mr. Warden, adjudicated,—or rather left to be adjudicated, for that they never could or would have been disposed of has been already, in paragraphs 19 and 30, shown,— that the landed property in every district in which they have been erected has, for the most part, changed hands. Even had the Inam Commission, which in reality has had nothing whatever to do with possession, actually caused the transfer of the whole of the alienated land, the change could have affected but a very small fraction of the community: but with regard to the ordinary Civil Courts, it has been otherwise,— widely and deeply has their effect been felt; for under their operation, money-lenders and Government officials have on all sides stepped into the places of the ancient landholders. I am by no means prepared to insist on the expediency of placing these landholders beyond the pale of any law which shall not secure to them, under all circumstances, the retention of their estates. The question is a difficult one, involving many important considerations of public policy. But I do submit, that the notorious fact that the operation of our regular Courts has been that above described, alone suffices to show how fallacious are Mr. Warden's views.

33. It would be useless, paragraph by paragraph, to describe all Mr. Warden's errors regarding the Inam Commission; but as it seems desirable that not one of them shoud remain uncorrected, the remaining statements open to question, and a brief explanation of the real facts, are below given in parallel columns:—

Some time after Mr. Elphinstone's departure, it was discovered that ten or twelve villages, which, according to the Peshwa's records, should have been resumed, had not been so resumed.	1. The number of villages was nearly one hundred, and the discovery was not that described by Mr. Warden, but that an order from the Deccan Commissioner, expressly directing inquiry regarding these villages, had been made away with, and put aside during the confusion attending the death of the Collector, Mr.
This, as I believe, was the foundation of the Inam Commission. (*Q.* 6062.)	

Thackeray, before the Fort of Kittoor.

The Inam Commission disturbed Mr. Elphinstone's settlement, and not only so, but it deprived the Peshwa's subjects of their rights, in respect to their lands, which the subjects of other parts of the Bombay Presidency had. (*Q.* 6062.)

2. It has been already shown (paragraphs 15 to 17) that Mr. Elphinstone's settlement has never been disturbed by the Inam Commission, or by any authority whatever, and (paragraph 19) that the non-extension to the Deccan, &c. of the law in force in the old provinces, which Mr. Warden calls a deprivation of rights, was effected, not in 1852, by the Inam Commission Act, but in 1827, by Regulation XXIX., passed by Mr. Elphinstone's Government.

Under Regulations XVII. of 1827, VI. of 1830, and VI. of 1833, enjoyment for thirty years is a sufficient title to exemption from the payment of public revenue. (*Q.* 6067-68.)

3. Not with regard to "grants made without the authority of the Peshwa since A. D 1803" This is expressly provided by the third clause of Regulation VI. of 1833, and embraces the great majority of the Guzerat alienations.

But they did not take any steps in the matter till A. D. 1852, thirty-five years after the abdication of the Peshwa, and when many prescriptive titles had been established under the Regulations by the efflux of time alone. (*Q.* 6068.)

4. Government did take steps in the matter long before 1852, and since 1843 the inquiry has steadily progressed. In 1839 were passed the Rules altered in 1840, which form the basis of Act XI. of 1852.

Not a single prescriptive title was, or, indeed, could have been, thus established, there never having been any such Regulation (paragraph 19).

And when they did act, they

5. The exclusion was the act

passed a law of a most rigid and unjust character, excluding the Peshwa's former subjects from the advantages possessed by other British subjects. (*Q.* 6068.)

of Mr. Elphinstone in A. D. 1827, and the law passed in 1852 was, with one exception (paragraph 27), to which Mr. Warden would scarcely object, a mere reiteration of Rules previously in force (paragraph 19).

Instead of simply extending, to the Deccan, the laws in force elsewhere, they re-enacted the provisions of a rescinded law (rescinded because "found inconvenient in practice"), by which sixty instead of thirty years' enjoyment was required to constitute a prescriptive title, and added the still more stringent clause that these sixty years must be sixty years before the introduction of the British Government, and, consequently, ninety-five years before the institution of the suit. (*Q.* 6068.)

6. They simply enacted a law founded on the Rules previously applied throughout the Deccan, Khandeish, and Southern Muratha Country, in which the rescinded law, mentioned by Mr. Warden, had never at any time been in force, the adjudication of all claims to exemption from assessment having been vested in the Government by Mr. Elphinstone's law of 1827.

And females were altogether deprived of their inheritance. (*Q.* 6069.)

7. Females have not been deprived, by Act XI. of 1852, or by any other Act or order, of their inheritance, or of anything whatever to which they were entitled under the former Government (paragraphs 42 to 50).

The only liberal provisions in this Act XI. of 1852 are to be found in Sections 7 and 8 of Schedule B, in favour of mosques, idolatrous temples, Mahomedan priests, and Hindoo astrologers. (*Q.* 6074.)

8. These provisions are merely the pre-existing rules. The policy which respects *bonâ fide* religious grants or endowments was enunciated, not by Act XI. of 1852, but by Mr. Elphinstone's proclamation of Sattara, which

had the full approval of the Governor General, the Marquis of Hastings.

Then, when we turn to the procedure of this Inam Commission, we find the *onus probandi* thrown on the defendant, the Inamdar, who is in possession. (*Q.* 6074.)

9. It is, and always has been, precisely the reverse—the *onus probandi* being thrown, not on the person enjoying exemption from assessment, but on the Government, who admit the claim unless they find clear documentary proof that, under the former Government, no such exemption was allowed (paragraphs 20 to 26).

And we miss the wholesome restraint of the provision of the regulations that inquiry shall be conducted in the same way, and under the same rules, as the general regulations prescribe for the trial of civil suits. (*Q.* 6074.)

10. It was Mr. Elphinstone, in 1827, and not the framers of the Inam Commission Act in 1852, who declared this provision of the Regulations inapplicable. The experience of thirty years' working of the law in the old provinces has proved the wisdom of Mr. Elphinstone's proceedings; and Mr. Warden himself, in another part of his evidence (*Q.* 6096), dwelt strongly on the necessity of substituting everywhere a more summary process for the form of procedure, the non-adoption of which, with regard to alienation claims, he here describes as a grievously unjust and oppressive measure of the Government.

And the specimens of the trials given in the return show how advantage was taken of this immunity to deprive men of their

11. No such advantage has ever been taken, nor do the returns quoted show that it was taken; they show full evidence

landed estates by summary process. (*Q.* 6074.)

on the only point affecting the title—viz. whether it was or was not allowed by the former Government—to have been always obtained, or the title to have been, in the absence of proof of its invalidity, admitted. If Mr. Warden made this statement in good faith, it proves him completely ignorant of the provisions of the law under which titles are and have been adjudicated, and which law as a member of the Government, he administered during two years.

The appeal to the Inam Commissioner is probably disposed of in the Inamdar's absence. (*Q.* 6074.)

12. Every appellant is, and always has been, permitted to appear before the Inam Commissioner, either in person or by counsel, whether European or Native.

Most certainly the final appeal before the Governor in Council is done in a corner. (*Q.* 6074.)

13. Government receive, and always have received, every written statement put forward by a claimant or by his attorney; have always required evidence regarding each and all of the assertions made in appeal; and have never set aside one of these assertions material to the issue, except on the clearest evidence;—the benefit of every doubt has always been given to the claimant.

In all matters not specifically provided for in the Act, the Government, a party to the suit, is to instruct the Court. (*Q.* 6074.)

14. The Government can correctly be described as a party to the suit no more than Her Majesty in Council could be thus

described. The Government have simply acted as trustees of the public revenue, and have never had any other interest in any one of these suits. But apart from this, their power of instructing the Court on any matter material to the issue has been really *nil* since the passing of Act XI. of 1852, in the Schedules of which, every single point of importance will be found clearly and specifically provided for. Before the Act was passed, Government could do as they pleased; the Act leaves them *only* the power of relaxing its provisions *in favour of claimants.* (Rule 11 of Schedule B.)

No order or decision of the Government is to be questioned in any Court of law. (*Q.* 6074.)

15. It has never been otherwise. Mr. Elphinstone, as above explained (paragraph 19), deemed this essential in 1827, and made provision accordingly. The object of Act XI. of 1852 was (to use the words of the Home Authorities), that the inquiries up to that time (1852) in progress should thenceforth be conducted by officers "formally vested with judicial powers, and subjected to legal responsibility." (Page 130 of No. XXX. of the published *Selections from the Records of Government.*)

And to crown the whole, subsequently to the passing of Act XI. of 1852, particular cases are

16. Certainly not; no legal proceedings whatever in particular cases are thus reported. But,

no longer reported to the Court of Directors. (*Q.* 6074.)

against the decisions of the Inam Commission, the Court of Directors receive appeals, although the decisions of all other legal tribunals are, in an immense majority of cases, not appealable to England at all.

Not only is the appellant excluded from the right to appeal to Her Majesty in Council. (*Q.* 6074.)

17. The Court of Directors receive all appeals, whereas, had the law in the old provinces been applied to the Deccan, &c., not one case in one hundred would have been appealable to Her Majesty in Council.

When we look, lastly, to the persons to whom these absolute powers of disposing of questions of title to land are entrusted, we find them to be not the Judges of the Sudder Court, nor any Judicial Officers whatever, but young gentlemen in the Civil Service, and Captains and Subalterns taken from their Regiments, principally on account of their knowledge of the Murathee language; and at this moment the Head of the Inam Commission is a Captain of Native Infantry. (*Q.* 6075)

18. The absolute powers consist of ascertaining—subject to scrutiny by the Government, and again by the Home Authorities—whether the Records of the former Government show the exemption from assessment claimed to have been allowed by the Peshwa or any officer with delegated authority.

The law empowers the Government only to *relax* the Rules; no authority can render them more stringent.

The superior knowledge of the Murathee language possessed by the officers appointed to the Inam Commission Mr. Warden himself has admitted. Besides this, they have been selected as possessing, 1*st*,—a thorough knowledge (acquired by special tuition and training) of the Peshwa's records

and accounts, and of the method according to which they were kept; 2*nd*, fair natural ability; and 3*rd*, good character and industry. The first of these qualifications (knowledge of the Peshwa's records) is, and has been, possessed by scarcely a single member of the Judicial service.

The Captain of Native Infantry at the head of the Inam Commission a few years ago exposed the incorrectness of much of Mr. Warden's work, and this Mr. Warden has doubtless not forgotten. Much, though by no means the whole of these exposures, has been published in No. XXXI. of the *Selections from the Records of the Bombay Government*

As if it were not sufficiently irritating to a people to be subjected to the injustice and partiality of the Act I have sketched, the snail's pace at which these Inam Courts move renders their operation the slowest mode of moral torture that could be applied to a nation on a subject the dearest to their pride and to their hearts, viz. the position and comfort of the widows and children they leave behind them. (*Q.* 6075.)

19. The operation of the ordinary Courts, which, according to Mr. Warden, ought to have been charged with the adjudication of these cases, is much slower; and in the old provinces, where they were thus charged, so complete (paragraphs 19, 29, and 30) has been the failure, that the only question now is how best to deal with past error and neglect.

Mr Warden has very partially described the effect of the Alienation inquiry on the "nation." He ought to have explained that while, of every thousand persons, one perhaps may claim exemption

from assessment *(in reality exemption from taxation)*, and must, therefore, have a direct interest in opposing any inquiry likely to put an end to it, the remaining 999, who are subject to taxation, must have just as direct an interest in promoting a measure having for its object an equal distribution of taxation, and their relief from the burden imposed upon them by the exemption fraudulently enjoyed elsewhere.

To the year 1856, out of 108,000 cases on the files, instituted against 100,000 landholders of Western India, 7,000 only have been disposed of. (*Q.* 6075)

20. When Mr. Warden was a member of the Government, it was pointed out, *with special reference to a minute of his own*, that of these 100,000 cases, one-half, being service holdings, would be adjudicable, not under the Inam Act, but summarily, on one general principle, applied to service holdings throughout the Presidency (paragraph 14 of Inam Commissioner's letter No. 3533, dated the 5th July 1854). The phrase "instituted against" describes most incorrectly the proceedings under Act XI. of 1852, the object and operation of which have been just as much to confirm and render secure real, as to bring under assessment pretended Inams.

After what has been said, it will not surprise any one to hear, that on a proposal to extend this

21. If the officer referred to is Captain (now Major) Wingate, this story is most improbable, as

Inam Commission Act from the patient and submissive inhabitants of the Deccan to the more warlike and independent people of Guzerat, the officer conducting the survey in this province declared his opinion that the measure would produce a rebellion; and although the English public has nearly made up its mind as to what did produce a rebellion at last, it may not be irrelevant to strengthen that impression by the remark that in the Bombay Presidency the rebellion first broke out in the Southern Muratha Country, where the Inam Commission first appeared, and carried on its proceedings most vigorously for nine years, namely from 1843 to 1852, even without the sanction of an Act of the Indian Legislature. (*Q.* 6075.)

The stronger the case which the East India Company has against the Inamdars on account of fraud, the more inexcusable is their having shrunk from meeting their defendant in the ordinary Courts of law. (*Q.* 6075.)

he well knew that to have extended the Inam Commission Act to Guzerat would have been to confirm every unauthorised and fraudulent exemption throughout a province in which, the accounts of the former Government having been successfully concealed and withheld, every exemption must have been allowed, under the provisions of an Act which confirms as Inam all that cannot be proved to be not so.

The first instance of outbreak in the Bombay Presidency occurred in foreign Territory (Kolapoor); was confined to sepoys; and originated, as far as it has been possible to ascertain, after searching inquiry, in religious fears.

The proceedings of the Inam Commission from 1843 to 1852 were carried on under the law passed by Mr. Elphinstone's Government in 1827, and according to rules previously laid down, and afterwards collected in Act XI. of 1852.

22. The ordinary Courts of law had been tried and found wanting, when Mr. Elphinstone (whose knowledge, experience, and judgment in such matters Mr. Warden has declared unequalled) in 1827 excluded these cases from their jurisdiction, and from 1827 to this day, where the ordinary Courts

have jurisdiction, they have proceeded at a pace compared with which that of the Inam Commission is celerity itself.

Their having departed from that principle of justice by which the *onus probandi* in such cases is thrown on him who seeks to oust another. (*Q.* 6075.)

23. On the contrary, they have taken on themselves the whole of the *onus probandi*, though wherever the ordinary Courts have jurisdiction it is otherwise, for there the *onus probandi* is thrown on the person enjoying the exemption. And they never "oust" any one, even on the clearest disproof of title (paragraph 31).

Their having altered the law of prescription in their own favour. (*Q.* 6075.)

24. They have altered no law of prescription whatever in their own favour, though they have admitted some modifications in favour of alleged Inamdars.

And their having constituted a Court of their own for the hearing of their own claims, to which Court they, a party to the suit, have the power of issuing instructions, which instructions are not to be questioned in any Court of law. (*Q.* 6075.)

25. As it was when the Peshwa's territory was conquered, and when Mr. Elphinstone's law of 1827 (Regulation XXIX.) was passed, so it is now, excepting that Government have, *since* the enactment of Act XI. of 1852, no discretionary authority whatever of importance left to them, excepting as regards *relaxation in favour* of claimants. Every matter of importance is specifically and distinctly provided for by the Inam Act, before the passing of which an order of Government had the force of law.

A Native of India has a right to consider an Inam his own property, for in the title-deeds to an Inam language is exhausted in order to express that all proprietary right is thereby transferred from the Government to the Inamdar. (*Q.* 6075).

26. It has been elsewhere (paragraphs 51 to 53) explained, that as the grant was absolute and unqualified, so, under the former Government, was its enjoyment uncertain and insecure. Under British rule alone has it always been otherwise, and has an Inam been really that which it purports to be—an alienation of public revenue, ceasing only with the extinction of the family of the grantee. The only object of the Inam Commission has been to ascertain the existence of the alleged title and enjoyment. Inams neither have been, nor can be, prejudicially affected by the operations of the Inam Commission. On the contrary, all Inams have been rendered perfectly secure by these operations. It is to *pretended* Inams, unauthorisedly and generally fraudulently, obtained, and to these only, that the Inam Act must be fatal, provided however, that Government may be in possession of the requisite proof, for if they are not, as too frequently is the case, the unauthorised and fraudulent exemption obtains the same confirmation as the Inam held under the best of titles.

If an Inamdar under the Peshwa's Government found himself childless in his old age, he had only to ask permission to adopt

27. It has been elsewhere (paragraphs 34 to 41) shown, that both these statements are incorrect, and that Mr. Warden,

a son to succeed him; which permission, on the payment of the usual Nuzzur, or relief, was granted, even after the death of an Inamdar, to his widow.

as a member of the Bombay Government, himself repeatedly declared that no such permission from the ruling power had ever been asked for; that on this principle Mr. Elphinstone had settled the Deccan; and that to ignore it would be a violation of the public faith.

The last privilege of succession has been taken away, in breach of a promise made by Mr. Elphinstone (*Q.* 6075.)

28. It has been elsewhere (paragraphs 10 and 35) explained, not only that Mr. Elphinstone made no such promise, but that he pointed out the extinction *(and with adoption there can be no extinction)* of families as the legitimate means of relieving the finances, and gradually effecting a fair distribution of taxation.

Act XI. of 1852 should be rescinded; the young gentlemen who have been constituted judges of questions of title to land should be remanded to their regiments; and all the decrees passed under authority of Act XI. of A. D. 1852 declared open to an appeal, in *formâ pauperis*, to the Sudder Court, and, finally, to Her Majesty in Council. (*Q.* 6075.)

29. The case of the village of Nanej, in the Rutnagherry Collectorate, held up to the introduction of British rule by the Mundleek family for the performance of service, will afford some idea of the value of this recommendation. The village was continued in 1818, as it was found, and was for some years afterwards correctly entered, in the public accounts. It then, through some fraud, began to be entered as an 'Inam.' The Collector detected this, tried the case, and declared no Inam title to exist. The appeal lay to the Judge, who, understanding no-

thing whatever about the Peshwa's records, or anything else on which the whole question hinged, reversed the decision. A special appeal was made to the Sudder Adawlut, on the ground of the Judge having completely misunderstood the nature of the accounts of the former Government; misapplied the evidence afforded by them; and, therefore, decided contrary to all usage and practice. The Sudder Court, Mr. Warden being one of the sitting Judges, refused to entertain the appeal, the question decided having been, they said, one of fact. And thus a village, known throughout the province to have been a service holding under the Peshwa, and, consequently, resumable at pleasure, has, under the operation of the law in force in the old provinces, become an Inam, and an absolute and permanent alienation of public revenue.

By the operation of the Inam Act, an Inamdar has no right of appeal to any of the ordinary Courts. (*Q.* 6129.)

30. The right of appeal to the ordinary Courts, the withdrawal of which is attributed to the operation of the Act of 1852, really never has had any existence. From the conquest to 1826, the Deccan, Khandeish, and Southern Muratha Country, were administered by a Commissioner, and in 1827 Mr. Elphinstone, when introducing the general Regulations,

specially excepted from their operation all questions connected with exemption from assessment (paragraph 19). .

As a member of Government, I suggested that, although it was called an Inam Commission, it was a Court for adjudicating the most important questions that could come on, and that those cases should be adjudicated in the form of trials, and I sketched out a form of proceeding, which was approved by the Government. (*Q.* 6133.)

31. The form of proceeding of the Inam Commission was laid down by the Inam Commissioner, Mr. Hart, years before Mr. Warden became a member of the Government; remained without alteration or question during the time Mr. Warden was a member; and is at the present time in use. What Mr. Warden really did was to record, in July 1854, certain observations regarding the form of *letter* submitted by the Inam Commissioner regarding each incorrect entry in the lists of the Deccan Surinjams (service holdings), prepared some years previously by Mr. Warden, when Agent for Deccan Sirdars, and revised by his successor, Mr. Brown. These lists had been found one mass of error and fraud, and the Inam Commissioner's letters exposed this, and this alone. Mr. Warden's suggestion had reference only to these letters, and introduced nothing whatever material to the question, which in each case really came before the Government. The form of proceeding sketched out by Mr. Warden was that required for the trial of any original suit or case, and might, doubtless, most advantageously have been, *though it was*

not, followed by Mr. Warden when he framed the original lists; but it was quite inapplicable to letters merely explaining, as the Inam Commissioner's letters did, whether the entries in Mr. Warden's and Mr. Brown's lists were or were not borne out by the documents from which they purported to have been made. All principles had long ago been determined The Inam Commissioner's duty was literally nothing else than that of correcting a false record of former proceedings; of erasing therefrom entries describing that which had never existed, and of substituting a description of the facts as they had always really stood. (See No. XXXI. of the published *Selections from the Records of the Bombay Government.*)

Under this Inam Commission, the act of resumption of land takes place by Government, unless a title can be proved by the claimant. (*Q* 6138.)

32. As to the latter of these statements, it has been already (paragraphs 20 to 26) shown that no holder has ever been required to prove a title, or been deprived of anything excepting on clear and specific proof of the absence of any right to it. And equally incorrect is the first statement regarding resumption, which has never taken place under any circumstances. On the contrary, on the 13th May 1854, the Government, *Mr. Warden being at the time a member of it*, reminded all

their officers that this was, and always had been, the rule, and that under no circumstances could inquiry regarding exemption from assessment affect actual occupation (paragraph 31).

The Government unsurveyed land bears a very high rent, and nobody would take Inam land unless these special Courts for adjudicating titles to Inams were abolished; and that is the way in which I consider that the Inam Commission bears upon the question before the Committee. (*Q.* 6143.)

33. The Southern Muratha Country, to which Mr. Warden has so particularly referred, has been surveyed throughout—the greater part before Mr. Warden left the country. The survey of the greater portion of the Deccan, indeed, has been completed.

The return ordered by the House of Commons to be printed does not state the number of cases that have been confirmed, and those that have been resumed. (*Q.* 6151.)

34. It is clearly stated in the Return, as follows:—

Declared hereditary or permanent	2,948$\frac{59}{210}$
Declared exempt for two or more lives.....	132½
Declared exempt during life of present incumbent	3,134$\frac{151}{210}$
Declared at once assessable	671½
Declared to be held as Surinjam, *i. e.* political service tenure	26
Total decisions..	6,913

Under the operation of the Inam Commission, the grantee is not allowed to sell Inams, and the power of adoption is not allowed. (*Q.* 6154.)

35. The Inam Act has made no alteration whatever in either respect, the rules now in force being simply those which obtained during the Government of the Peshwa (paragraphs 34 to 41).

Land not held in Inam has generally no saleable value. (*Q.* 6157.)

36. That this is not the case can be proved by the files of the Civil Courts, which are burdened with suits on account of the sales declared by Mr. Warden to have no existence. Land in some localities fetches a price equal to the amount of the Government assessment for one hundred years.

I never in the course of my experience knew of such land being bought by a capitalist, whether European or Native. (*Q.* 6161.)

37. The files of the Civil Courts, over which Mr. Warden during the greater part of his service presided, prove this to be erroneous

I say that a gentleman who has not had a legal education is not competent to try titles to land. (*Q.* 6233)

38. The Inam Commission has never adjudicated titles to land, in the only sense in which the Committee can have understood Mr. Warden, who, having, as a member of Government, reviewed the Inam Commission proceedings, ought to have known that the duty of the officers of the Inam Commission has been simply to ascertain the condition of land—(whether exempt from assessment or not)—under the Peshwa's Government, and that no amount of legal knowledge could possibly have assisted them. With possession they have never had anything whatever to do,—that has in all cases been left to the ordinary Courts of law.

Is Captain Cowper a man of competent age?—I should say he is under thirty. (*Q.* 6242.)

39. Captain Cowper is thirty-nine years of age. He landed at Bombay on the 9th July 1836,

when he was met and saluted on the quay by Mr. John Warden (who had known his family), by whom twenty-two years afterwards he has been described as under thirty. Were Mr. Warden's statement correct, Captain Cowper would have come out as a cadet when only eight years old!

The former and existing Practice in regard to Succession by Adopted Sons and Females to Grants of Public Revenue.

34. The error in regard to the practice of adoption, which has for some time prevailed in many quarters at home, Mr. Warden's evidence has certainly not contributed to dispel. To a question (6152) put to him—whether under the Inam Commission Act adoption was allowed "as it used to be in the Hindoo code"—Mr. Warden simply replied that the Act was silent on the subject. But can Mr. Warden, who held a judicial office during nearly the whole of his service and who for some time was a member of the Government, have been unaware that whatever the Hindoo code lays down regarding adoption the British Government allow, and ever have allowed? Mr. Warden ought to have replied that every Native of India can now adopt whenever and whomsoever he or she may please; and he might have added that this is *more* than under Native rule any person was able to do, for the Peshwa is proved to have interfered with even the *rite* of adoption, and on one occasion to have annulled an adoption actually celebrated in a family of the highest rank—that of the Chief of Nurgoond, who was lately hanged for the unprovoked and cowardly murder of a British officer.

35. It is only in the capacity of trustee of the public revenue that the British Government has ever exercised, or claimed to exercise, any interference; but this interference has had no reference whatever to the rite of adoption (this rite has under British rule ever been celebrated at the will of the individuals concerned), but merely to the recognition of it by the Government, as giving a claim to inherit public revenue. Here Government have had to determine whether they

should, by their own act of recognition, perpetuate exemption from taxation after the extinction of the family to which the exemption was originally granted. Mr. Elphinstone's opinion and instructions in this matter were very clear. On the 24th July 1819, in describing to all his subordinates the rules to be observed with regard to alienations of the public revenue, he emphatically declared that their prospective reduction should be mainly effected, not by interference with those having just claims, "but by vigilance in preventing the advantages of the grant being enjoyed by impostors after the extinction of the individuals or the families for whose benefit they were intended." And yet Mr. Warden informed (*Q.* 6075) the Committee,—"This last privilege of succession to an adopted son has been taken away, in breach of a promise made by Mr. Elphinstone."

36. And now, as regards the practice under the former Government, which Mr. Warden described to the Committee with equal want of accuracy when he told them (*Q.* 6075) that an Inamdar "had only to ask permission to adopt a son to succeed him, which permission on the payment of the usual Nuzzur or relief was granted, even after the death of an Inamdar to his widow." So far was this from being the case, that, after the conquest of the country, one of the first questions submitted to Mr. Elphinstone by the Collector of Poona was one regarding adoptions by widows, which had, it was stated, been under the rule of the last Peshwa altogether prohibited; and this, be it remembered, not with regard merely to succession to alienated public revenue, but absolutely. Mr. Elphinstone was asked what course should be followed under British rule, and on the 11th August 1818 he replied,—"I beg the law may be kept as it was in Bajee Rao's time, till there shall be full time to gather good opinions as to the Hindoo law; the present practice [*i. e.* the prohibition of posthumous adoptions by widows] seems most consistent with reason."

37. Again, Mr. Warden, in describing (*Q.* 6060) the utility and the benevolence of the course followed by Mr. Elphinstone in circulating to all subordinate officers and others inquiries regarding the usages and laws of the country, omitted all mention of the replies on the subject of adoption. I will briefly notice them. The Poona Collector stated,—"The sanction of Government was always indispensable to render adopted children the legal inheritors of their adoptive parents." The Political Agent in Khandeish replied that "the

sanction of Government was required for the adoption of children when any property was pending"; and the Collector of Nuggur (Captain, afterwards Sir Henry, Pottinger) reported the sanction of Government to have been always necessary, not only to adoptions, but also to successions, "where the persons concerned were of importance, such as Jageerdars, Inamdars, Zemindars, or great Sowcars." These, and opinions from all other quarters in which it was possible to obtain information of value, were, according to Mr. Elphinstone's instructions, gathered and embodied in a summary of "the law and custom of Hindoo castes within the Deccan provinces subject to the Presidency of Bombay." This is the title of the work which, according (*Q.* 6060) to Mr. Warden, "has no more dignified appellation in the country than 'Steele's Book.'" It was in 1826, by order of Mr. Elphinstone's Government, "circulated for a certain time as a book of information, though not of authority," to be ultimately improved "by the decision of all doubtful questions, the removal of all glaring blemishes, and the filling up of all great deficiencies, until it forms a complete code of laws. sanctioned by Government, and accessible in their vernacular language to all classes of its subjects." In this work will be found the following distinct definition of the practice in regard to adoptions, as conveying a title to inherit grants of public revenue:—

> "Lands given in Inam on failure of heirs revert to the grantor, whether Government or any individual Jagheerdar" (page 235). "Widows may also adopt, with the consent of the representatives of the grantors of the Inam" (page 185). "The consent of the Sirkar (Government) is necessary to adoptions by Wuttundars" (page 185). "Inamdars, exclusive of dancing-girls, in making adoptions, must obtain the consent of the representatives of the grantors, or, if the Inam land were granted by Government, of the Sirkar. Nuzzurs were paid to the Native Government on occasions of granting permission to adopt" (page 185).

38. On this point, Mr. Warden's opinions have fluctuated strangely; for, as a member of Government, he recorded in 1854 minutes wholly inconsistent with statements previously made by him, and equally so with those since made to the Committee. On one occasion, Mr. Warden minuted,—"*In the case of Inams*, it is not necessary to the validity of an adoption that it be sanctioned"; on

another, he declared that to decline to allow sons to whose adoption Government had refused recognition to inherit Inams, would be at variance with "the principles on which we settled the Deccan," and "a violation of the terms conceded to the people of the Deccan at the conquest"; and on several other occasions he recorded similar opinions.

39. Yet a few years before (in 1845), Mr. Warden had, as Agent for Sirdars, in reply to a Government reference, specially drawn their attention to an order (below transcribed) of the Deccan Commissioner regarding an Inam village, and had told them that he knew it to be but one of several which he recollected to have been issued, but could not just then trace:—

> "The lady has adopted a son, but the whole of the above grants are only to be held by the widow for life, and at her death to lapse to Government, the adopted son having no claim to inheritance of this description."

40. Thus Mr. Warden has asserted:—

As Agent for Sirdars, in 1845,—	*As Member of Government*, in 1854,—	*Before the House of Commons Committee*, in 1858,—
"An adopted son can have no claim to inherit an Inam."	"In the case of Inams, it is not necessary to the validity of an adoption that it be sanctioned."	"An Inamdar under the Peshwa's Government had only to ask permission to adopt a son to succeed him."

41. For further information regarding the former practice with regard to adoptions by Inamdars, I solicit a perusal of the memorandum placed by me before Government on the 26th May 1855, accompanied by statements, prepared from the State Records of the Peshwa's Government, containing a number of selected cases, forming, however, but a small fraction of those on record. One of these statements shows not merely that transfers of Inams by gift or sale acquired validity only when sanctioned by Government, but proves the control of the Government to have been so fully exercised as to have extended to the transfer of a small portion of Inam land by the powerful Minister, Nana Furnavees, and to another by the Chief of Vinchoor, one of the Peshwa's greatest feudatories. Another state-

ment contains instances in which the Peshwa sanctioned adoptions on the payment of a Nuzzur or relief, and others in which adoptions were disallowed, and Inams resumed by him, on the specifically recorded grounds of such adoptions not having been made with the sanction of the Government. I would likewise solicit a reference to No. XXVIII. of the published *Selections from the Records of the Bombay Government*, which contains valuable evidence recorded a few years earlier by the Inam Commissioner, Mr. Hart, who stated, —" The records of the Hindoo Government, to which ours has succeeded, show that the sovereign carried his interference with adoptions so far as not only to withhold his sanction from adoptions which he was not disposed to recognise, but to forbid the very ceremony, and even to order the repudiation of a child unauthorisedly adopted"; and in the same *Selection* it is shown that reference made in 1845 to all then existing Native States proved " that, as a general rule, among the existing Governments of India, no adoption is looked on as valid unless previously sanctioned by the Sirkar, and that the same restriction exists with regard to transfer of Inams by gift or sale."

42. Mr. Warden informed the Committee that by the law (Act XI.) enacted in 1852, " females were altogether deprived of their inheritance" (*Q.* 6069); that by the Native usages, they had antecedently a right to succession (*Q.* 6070); and that " the Natives, our predecessors, allowed female succession to Inams without question, as a matter of right" (*Q.* 6247). These statements are really extraordinary. Had the question been a doubtful one,—had the point during previous years been mooted and left undecided,—had the practice of the Native Government been subsequently in any way questioned or departed from,—Mr. Warden's replies might have admitted of some explanation; but as regards female succession, how does the case really stand? Just as it has stood from time immemorial—from which period, inheritance of land by a Hindoo female has never been heard of!

43. The State Records of the Peshwa's Government, which are forthcoming, and very complete from A. D. 1750, do not contain a *single instance* in which a Hindoo female inherited an Inam. Indeed, it could not be otherwise, when the very deed of grant expressly forbade it. An Inam was always granted to sons and grandsons, and their posterity, and on failure of male heirs, a family became, for all

purposes of inheriting land, extinct, and was so described in the State Records which contain the registry of sunnuds to this effect.

44. With regard to widows, the case was different; they were allowed to hold, but during life only. Their right to do so has been upheld by the British Government, and the Inam act expressly provides (Provision 1 of Rule 9 of Schedule B) that no Inam shall be held to have lapsed during the life-time of the widow of the last holder. Mr. Warden's "female Patel" (*Q.* 6071) may have been a widow; otherwise, supposing her to have been a Hindoo, it is certain that, if she really ever held at all, she must have done so unauthorisedly, and contrary to universal usage.

45. The Mahomedan practice differed. Mahomedan grants were specifically made to sons and daughters, and to their descendants. This practice has been respected, equally with the Hindoo one, by the British Government.

46. On the 16th October 1854, I inquired whether throughout the Presidency it had been the practice since the introduction of British rule to record or notice the existence of females, when adjudicating claims to Inams or other property held from the State. I found that in not a single Collectorate had such a practice ever been heard of.

47. I next ascertained the practice in Sattara from 1819, when the State was created by the British Government, to 1848, when it lapsed, and found that female inheritance had been there equally unheard of.

48. Later still, I ascertained that no other practice had ever obtained under the Baroda Government.

49. Four years ago, when commencing these inquiries, I obtained the attendance of two Shastrees and one Sirdar, all Hindoos, and all above seventy years of age, who were able to describe, from personal knowledge, the practice of the Peshwa's Government. Each stated on oath that he could neither instance nor recollect having ever heard of a single case of succession by a Hindoo female to Inams or other grants held from the State.

50. I have hitherto stated only the practice as affecting property (Inam, &c.) granted by the State. But in this matter the same rule applies, and has always applied, to property generally; and not only has this been ruled by the highest Court of Judicature (the Sudder Adawlut), but the Judge of that Court by whom, on the

16th February 1849, the judgment (below transcribed) was pronounced,* *was Mr. Warden himself:—*

"Appellant pleads that the Zillah Judge's decree is opposed to the *Shastru*, in being founded on the principle that where a division of property takes place, an instrument, stating the share of each sharer, is invariably passed, and that, in fact, no division of property can be said to have taken place unless such document is passed. The respondent answers that even if such a document exists, the real property and religious perquisites, the proprietary right in which forms the subject in dispute in this case, cannot descend to representatives of a female of a family; and that, failing a male heir, the alienated share reverts to the family to which it originally belonged; and therefore, admitting the separation, on the proof of which the reversal of the Judge's decree is sought, his decree will still be in conformity to the *Shastru*, seeing that appellant is only alive to his family in right of his (appellant's) mother. If the statement of respondent be correct, it will not be necessary to go into the evidence, which the appellant urges as sufficient, and the Judge considered insufficient, proof of a separation without a formal deed. Appellant objects to the manner in which respondent meets the appeal as not being one of the modes in which he urged his original claim; but he claimed the property of his ancestors, which he said had never been alienated; and as the precise question that the Court has to decide is, whether the decree of the Judge is or is not opposed to the *Shastru*, it appears to be bound to determine this very important point: and a question having been put to the *Shastree* of the Court, he says that the answer of the respondent has the sanction of the law. The decree of the Zilla Judge must, therefore, be deemed conformable to the *Shastru*, and it is accordingly affirmed, with costs on appellant."

The Nature of an Inam.

51. Mr. Warden described an Inam as "a grant of land in fee simple" (*Q.* 6137). So far from correct is this statement, that of the tens of thousands of genuine Inam sunnuds granted by Hindoo sovereigns which are in existence, and the registries of which are to be

* Page 67 of Part II. of *Sudder Dewunee Reports* from 1848 to 1850.

found at length in the Peshwa's State Records, there are, probably, not half a dozen which do not specifically define the grant as one made to the grantee and to his heirs male, and the same records clearly prove that on default of male issue the Inam reverted to the Government.*

52. Mr. Warden informed (*Q.* 6075) the Committee that "in the title-deeds to an Inam language is exhausted in order to express that all proprietary right is thereby transferred from the Government to the Inamdar." The following is from a minute recorded on the 16th January 1823 by Sir Thomas Munro, whose character for justice and generosity was a sufficient guarantee, Mr. Warden elsewhere (*Q.* 6075) stated to the Committee, that under his administration all due respect would be shown to the rights of the Natives of India. Sir Thomas Munro recorded his minute after he had effected the reduction and settlement of the Southern Muratha Country, the district in which Mr. Warden considers the Inam Commissioners' inquiries to have been specially mischievous and oppressive:—

> "In this country, under the Native Governments, all grants whatever are resumable at pleasure: official grants are permanent while the office continues, but not always in the same family; grants for religious and charitable purposes, to individuals or bodies of men, though often granted for ever, or while the sun and moon endure, were frequently resumed at short intervals. Grants of Jagheers or Inam lands from favour or affection, or as rewards for services, were scarcely ever perpetual. It was rare that any term was specified, and never one or more lives; but it made usually little difference whether the grant was for no particular period or perpetual. The (Altumgha) perpetual grant was as liable to resumption as any common grant containing no specification of time; it was resumed because it was too large, or because the reigning sovereign disliked the adherents of his predecessors, and wished to reward his own at their expense, and for various other causes. There was no rule for the continuance of grants but his pleasure; they might be resumed in two or three years, or they

* See also the evidence to this effect collected from every quarter, described in paragraph 41.

might be continued during two, three, or more lives; but when they escaped so long, it was never without a revision and renewal. I believe that the term of their lives is a longer period than grants for services were generally permitted by the Native Princes to run."

53. This minute was specially brought to Mr. Warden's notice* just before he left India, in a letter of mine, which he took great pains and wrote at length (though unsuccessfully) to prove incorrect, as it exposed the erroneousness of lists prepared by him as Agent for Deccan Sirdars, on the authority of which the continuance of the Deccan Surinjams had been ordered by the Home Government. On that occasion, too, I explained how completely Mr. Warden's assertions were at variance with the evidence afforded by the Peshwa's State Records.

Mr. WARDEN'S *connection with past Educational Proceedings.*

54. With regard to Education in Bombay, the acquirements of the Native students, and the state of the educational establishments, Mr. Warden told (*Q.* 6264) the Committee,—"I am aware that there was formerly a good deal of cramming." Yet these are the very institutions described in a public address written by Mr. Warden, as President of the Board of Education, and read on the 2nd April 1853, as sending "forth into the world, to take part in the administration of India, a number of Native youths who need not fear to challenge the Haileybury boys to a contest in any branch of education except the study of Greek and Latin, which has never been introduced here."

Qualifications of Public Servants in the Native Languages.

55. On the subject of the Native languages, Mr. Warden's evidence is equally open to correction, the simplest and best method of affording which is the use of parallel columns:—

There is the Hindoostanee, which is the political and colloquial language. (*Q.* 6081-82.)	1. What is meant by this it is hard to say, but certain is it, that out of the few large towns and camps, Hindoostanee is throughout the Bombay Presidency an unknown tongue.

* See page 21 of No. XXXI. of the published *Selections from the Records of Government.*

When I first went to India, I was stationed at Dharwar, on the frontier between the Presidencies of Madras and Bombay, and whenever I went to the Kutcheree I was liable to have persons appear before me, speaking, one Canarese, a second Murathee, and a third Telingee. This difficulty was readily overcome by the Native officials, who, as they read either of these languages, turned it so rapidly into Hindoostanee that it was difficult to believe this last language was not before them. (*Q.* 6083.)

2. Had Mr. Warden added that, having no knowledge whatever of any one of the languages thus rapidly turned over, he was unable to know whether the Hindoostanee rendering bore any reference to the original speech, he would have described fairly to the Committee an operation which sufficiently accounts for any amount of misapprehension and consequent error on the part of Mr. Warden, or any officer similarly circumstanced.

In Her Majesty's Supreme Court, where justice is administered in English, the business is admirably done. There are attached to that Court English and Native Interpreters in each language. The latter, watched by the former, is for the most part employed; but the instant a difficulty arises, the Englishman, who has a critical knowledge of the language of the witness, steps in, and satisfies the mind of the Judge as to the correct interpretation of the expressions used. (*Q.* 6083.)

3. On the Civil side of the Supreme Court, there is not a single European now employed as Interpreter—all are Natives; and for some time there was not a single European interpreter employed on either side of the Court, in which under no circumstances whatever does the practice described by Mr. Warden prevail.

The following opinion of an intelligent and well educated Native, employed in the Supreme Court, I believe to be correct:—"The European Interpreter is more liable to commit blunders—first, in understanding the Native testimony, and secondly, in translating the English questions into the vernacular. He is unnatural in his accents, mechanical in his renderings, more pedantic

than idiomatic, thinking, as it were, of his grammar and dictionary when speaking, and therefore he often goes far beyond the poor understanding of the Native witness."

The Native's opinion of the Sudder Court is the very opposite. It is considered as "unstable as water," and this because (receiving, as it does, appeals from all parts of the country) justice is there every day administered to persons speaking three or four different languages (all foreign to the Judges), without the intervention of English. (*Q.* 6083.)

4. In 1853, when Mr. Warden sat on the Sudder Bench, the removal by Government of his two colleagues was connected with a painfully notorious correspondence, in which he described the Sudder Court as "unstable as water" (the same set phrase now again made use of), but attributed the defect to causes irreconcilable with this statement to the Committee.

I think that the gentlemen who practise at the bar of Her Majesty's Supreme Court, and who know the language of the country, are the most fit persons to sit on the bench in India. It was usual for them to plead at the bar of the Sudder Court. (*Q* 6087.)

5. Inquiry would prove, beyond doubt, that of these gentlemen not one has ever known a word of any language save Hindoostanee, which for all judicial purposes is useless; and that scarcely one has ever had any other than a most superficial colloquial knowledge even of Hindoostanee, or rather the corrupt *linguâ franca* which in the Bombay Presidency bears that name.

Were English made the language of all Courts of Justice, and were interpreters employed accordingly, there would be those capable of detecting a false translation by the interpreter, as there

6. The pleaders now can watch, and always have watched, the Sherisṭedars, in precisely the the same manner.

would be on both sides pleaders acquainted with both languages watching the interpreters. (*Q.* 6104.)

There is a section of the Bombay Regulations which makes it penal for a Sheristedar to abuse his influence, which is a presumption that he has some influence. (*Q.* 6110.)

7. There is no such Section, and there never has been any such Section in existence. Sheristedars have always been, in common with all Native officers on the establishment, liable to punishment for "all acts of abuse, or misapplication of *authority*," (not "influence,") or "neglect of duty," under Section XXXVI. of Regulation II. of A. D. 1827, and under no other Regulation or law.

Where the Queen's system of justice is adopted, whether a Judge is acute or stupid, he is, at all events, always known to be exercising his own judgment. (*Q.* 6111.)

8. Not necessarily one iota more than the Mofussil Judge. Both are equally required to form a judgment on the evidence before them, and of this the Supreme Court Judge receives only a translation, whereas the Mofussil Judge, if qualified for his post, receives the evidence itself as given by each witness.

The people feel satisfied that the case is brought home to the Queen's Judge, and that he gives an independent opinion; but the case does not come home in the same way to the Company's Judge. (*Q.* 6113.)

9. The case comes home to the Queen's Judge through an interpreter. To the qualified Mofussil Judge it comes home, as just explained, direct from the witness.

One does not hear the conduct of the Company's Judges impugned, or of any other fault being found with them, except that they

10. This assertion requires no explanation, the facts being patent.

are liable to be misled by other people who know the language. (*Q.* 6116.)

Were two interpreters appointed to each Mofussil Court on the salaries now allowed to the Sheristedar and his Deputy, the Sheristedar would, under this system, disappear. (*Q.* 6124.)

11. The Sheristedars would not disappear, unless the interpreters performed all the Sheristedars' duties (such as recording evidence, &c. &c.), and if they did, the change would be simply one of name.

I think that, with competent English officers as Judges, a Sheristedar has influence. I think that the mere tone of voice, or the manner in which he reads a paper, has an effect. They are extremely quick in discovering the bias of a man's mind. (*Q.* 6272-73-74.)

12. Mr. Warden did not explain why, when called an interpreter, the same man does not, and cannot exercise the same influence, owing to the same causes.

56. I have now arrived at the close of a letter in which I have endeavoured, not to demonstrate the perfection of the measures adopted since the fall of the Peshwa for the adjudication of claims to hold land exempt from assessment, but to correct the many errors and omissions in Mr. Warden's statements regarding the Inam Commission.

57. Government will, I trust, see fit to secure for this letter publicity equal to that which Mr. Warden's evidence has obtained.

I have the honour to be,

Sir,

Your most obedient Servant,

T. A. COWPER, Captain,
Revenue Commissioner for Alienations.

Minute by the Right Honorable the GOVERNOR, *dated 17th December 1858.*

I think that Captain Cowper should either incorporate the substance of his letters of the 20th ultimo and 7th instant (Nos. 3646 and 3834) with his previous letter (No. 3310 of 1858)* on the subject of Mr. Warden's Evidence before the Select Committee of the House of Commons on Colonisation and Settlement (India), or he should append the information contained in these separate letters to the original one in the shape of notes.

It appears to me that the letter, with these additions, will contain a very complete vindication of the objects of the Inam Commission, and of the Act of the Legislature (No. XI. of 1852), which have been so incorrectly described by Mr. Warden.

Captain Cowper's letter will, of course, be sent to the Secretary of State, and to the Government of India, and a sufficient number of copies should be printed and sent home to allow of a copy being sent to every Member of the Select Committee before which Mr. Warden's evidence was taken, if Lord Stanley should think fit to distribute them.

As this evidence has been published in the newspapers in this country, and as it is certainly calculated to do great mischief, impugning, as it does, the honesty and justice of the Legislature, and of the Executive Government, I think it is extremely desirable that the contradiction should also be read by the public. In all countries, accusations of this kind against the Government are more eagerly read and more readily believed than they ought to be, and it is only reasonable to suppose that, in a country where the rulers are foreigners, aliens in blood, language, and religion, where insurrection is still smouldering in many quarters, and rebels in others are actually in arms against their foreign rulers, they will be greedily laid hold of as a justification of rebellion, and as a means of keeping alive those passions and animosities which it is our first object to allay and to quench. If the publication of Captain Cowper's letter produce no

* This was subsequently done.

other effect, it may, at least, undeceive some of our own countrymen, who, under the influence of a misconception of the bearings of the question, and from a generous sympathy with the supposed victims of a grasping and dishonest policy, are doing their utmost, and, it may be feared, with too much success, to widen the breach between the people of this country and the Government. If this view is concurred in by the Board, I think a copy of the letter should be placed in the Editor's Room.

17*th December* 1858. ELPHINSTONE.

Minute by the Honorable Mr. MALET, *dated* 23*rd December* 1858.

I concur.

23*rd December*, 1858. A. MALET.

Minute by the Honorable Mr. REEVES, *dated* 20*th December* 1858.

I concur in these views.

20*th December*, 1858. H. W. REEVES.

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