GOVERNMENT OF INDIA

DECENTRALIZATION COMMITTEE

FOR THE

ROYAL COMMISSION

UPON

DECENTRALIZATION

MEMORANDUM ON THE ALIENATION OF GOVERNMENT LANDS AND RIGHTS APPERTAINING THERETO

BY

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CALCUTTA
SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA
1908

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Alienation of Government Lands and Rights appertaining thereto.

Statutory law relating to ownership and control.

By section 39 of the Government of India Act of 1858 (21 and 22, Vict. c. 106) all lands and property in the possession of the East India Company became vested in the Crown, and by section 40 the Secretary of State in Council, subject to the concurrence of a majority of votes at a meeting of the Council, was empowered to sell and dispose of property so held. By section 41 of the same Act, expenditure of the revenue of India, both in India and elsewhere, was declared subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenue, or of any property coming into the possession of the Secretary of State in Council by virtue of the Act, can be made without the concurrence of the Council.

2. Subsequently, by section 1 of the Government of India Act of 1859 (22 and 23, Vict. c. 41) the Governor General in Council, and any Local Government within the limits of their respective jurisdictions, subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council, may from time to time prescribe, were also "empowered to sell and dispose of all real and personal estate whatsoever in India for the time being vested in Her Majesty" by the Act of 1858.

3. These are the general statutory provisions which govern the disposal of lands the property of Government. No rules or restrictions under the statute of 1859 were laid down by the Secretary of State till many years later. After the Mutiny numerous grants of land and confiscated properties were given as rewards for services rendered and doubts arose whether, under the terms of the statutes, and in the absence of such rules, the Indian Government had power to make them without the previous authority of the Secretary of State in Council*. It was held by the Secretary of State that "the power in question has always been recognized by the Home Government as existing in the Governor General in Council, and with his previous sanction in the Local Governments, but

Legislative Despatch No. 22, dated 31st October 1861.

* Similar doubts were subsequently raised by the Secretary of State himself in connection with the case which gave rise to the statutory rules referred to in paragraph 6. (Financial Proceedings, Sal. March 1889, Nos. 24 to 51.)

subject in each case to the confirmation of the Court of Directors, or now of the Secretary of State in Council. This confirmation has in most cases been notified in express terms, but it may occasionally have happened that on the grants being reported home they have received only tacit approbation." He suggested, however, that it might be as well, in sanctioning such grants in future, to make them subject to confirmation of the Secretary of State in Council; but subsequently he agreed that when grants were reported and not objected to, it should be assumed that the Government of India's proceedings had met with approval.

4. In 1862 the Secretary of State ruled that when grants were made with a partial abatement or entire abandonment of the government dues, they should, as involving a surrender of "a portion of the revenue of India" be subjected to the same check as is applicable to the grant of pensions or other charges on the revenue of India. "There should" he said "be no relinquishment of any portion of the government revenue without previous communication with the Home Government, nor should any grants which involve any loss of revenue, whether for a limited term or in perpetuity, be made except with the consent and approval of the Secretary of State in Council, to whose control the expenditure of the revenue of India, both in India and elsewhere, has expressly been made subject by enactments of the Imperial Legislature." And he directed the Government of India not to "initiate any grants involving loss of revenue, or hold out expectations of such grants being made, without obtaining the previous sanction of Her Majesty's Government".

Legislative Despatch No. 21, dated 9th July 1862.

5. The practice of specially reporting grants of land to the Secretary of State has long ceased, and save in cases of exceptional importance, they are now reported only in the record of the proceedings of the Government of India. But the principle formulated by the Secretary of State for dealing with alienations of government lands and rights has been repeatedly reaffirmed in subsequent orders on the subject.

The Statutory Rules.

6. The desirability of prescribing rules under the statute of 1859 was raised in 1887 by the Secretary of State in connection with a concession for water power for working mills in which the interests of Government had been insufficiently safeguarded, and as the result of a long discussion, the rules of 1894 quoted in Appendix A. were prescribed. These rules limit the contractual powers of the Government of

Financial Resolution No. 933 Ex., dated 20th February 1894.

India and Local Governments in the matter of "concessions, grants, leases and contracts" made or entered into with "any person, firm, company, syndicate, municipality or other public body" for "mining, milling or any other industrial or manufacturing purposes" or "for the purpose of any railway, tramway, water works or other undertaking of a like nature". Grants, etc., made under any special legislative sanction, or for "ordinary agricultural or settlement purposes" or under special rules issued or approved by the Secretary of State in Council, are expressly exempted from their operation; but otherwise they embrace all concessions, grants or leases "of land, of mineral or forest rights, of rights to water power, or of right of way or other easement" or of any privilege in respect of these rights and properties for the purposes mentioned.

7. Under them the powers of the Government of India and Local Governments respectively to sanction any concession, grant, lease, or contract involving the execution or maintenance by Government of works, are as follows:—

If the concession, grant or contract	By Government of India.	By Local Governments.
(1) contains an unconditional power of revocation on expiry of six months' notice to that effect and is intended to endure for not more than . .	10 years	5 years.
(2) and does not impose an annual liability in excess of .	₹50,000	₹5,000
(3) or a charge or expenditure or liability to damages in excess of .	Twelve lakhs.	One lakh.
(4) or involve the concession of property or rights of an estimated value in excess of .	Twelve lakhs.	One lakh.

8. Concessions, grants, etc., otherwise within the powers of Local Governments, require the sanction of the Government of India if made to a joint stock company; transfer and subletting to a company are subject to the same sanction; other transfers of interest require the approval of the authority which granted the concession or contract.

9. Of State rights and properties to which the foregoing statutory rules are applicable only mineral and forest rights and lands come within the scope of this note.

The Mining Rules.

10. Concessions of mineral rights are governed by special rules sanctioned by the Secretary of State in 1899 and are

therefore exempt from the statutory rules. They contain the following conditions :—

(*a*) Licenses to explore for minerals, *i.e.*, to search the surface of the land specified, may be granted for one year, renewable for a similar period by such persons, and under such rules, as the Local Government may prescribe.

(*b*) Licenses to prospect for minerals, *i.e.*, to mine and quarry, may be granted by the Collector to an applicant approved by the Local Government, for one year, renewable for two years.

(*c*) There is no limit to the area for which exploring and prospecting licenses may be given. The latter does, while the former does not, give a claim to a mining lease in the area prospected or explored.

(*d*) Mining leases (except for precious stones) may be sanctioned by the Local Government for a period of not more than 30 years, over an area which varies according to the nature of the mineral from 2 square miles (in the case of coal) to $\frac{1}{4}$ square mile (in the case of gold and silver) provided that the total area held by the lessee, or those in joint interest with him, does not exceed 10 square miles. Mining leases for precious stones require the sanction of the Government of India.

(*e*) The Government of India may vary the terms and increase the area fixed by the rules, provided that the total area held by the lessee, or those in joint interest with him, does not exceed 20 square miles. They may also permit renewal of a lease for a further term not exceeding that of the original lease.

Geology and Mineral Proceedings, May 1899. Nos. 9 to 14.

11. It was proposed by the Government of India that the power conceded to them to vary the rules should be delegated to Local Governments, but the Secretary of State was of opinion that it should be reserved to the Supreme Government till experience had been gained of the working of the rules.

Despatch No. 144, dated 6th July 1899.

12. No special rules have been framed with the sanction of the Secretary of State in respect of the grant of State forest

Rules as to Forest Rights.

rights. Under the Forest laws, no portion of the area of a reserved forest can be excluded from the reserve, which is a necessary preliminary to the concession of private proprietary rights therein, without the sanction of the Government of India.

E.g., the Indian Forest Act, VII of 1878, section 26.

13. And by executive orders, special grants of timber or forest produce, free or at favourable rates, require the sanction of the Government of India when they exceed the following limits:—

(*a*) For the construction of large works of public utility such as railways, tramways and the like—₹10,000.†

(*b*) To village communities, public bodies, departments of Government, or sections of the community in their collective capacity—₹1,000.

(*c*) In other cases ₹500.

All concessions, of whatever value, made under (*a*) for the construction of railways or tramways must be reported at once to the Government of India. The Forest Department is treated as a *quasi*-commercial department, and the Government of India have laid down the principle that grants of forest produce should be governed by the same considerations which would be applied if the grants were made in money. The rules do not, however, apply to forest concessions in favour of villagers and agriculturists.*

Circular No. 8 F., dated 21st May 1895.

Sales, leases and grants of land.

14. In regard to leases and grants of land two different classes of cases have to be considered, *viz*.:—

(1) lands given for agricultural or pastoral purposes, or for settlement.

(2) lands given for public or *quasi*-public purposes, or for services to be performed, or for private benefit.

(*a*) *For Agricultural purposes or Settlement.*

15. Cases coming under the first class are, as already noted, expressly excluded from the scope of the statutory rules. The rules which deal with them will be found collected in a publication entitled "Rules for the lease or sale of waste lands in India" prepared at the instance of the Secretary of State. They are too numerous to be summarized here but they are broadly divisible as follows:—

I. Those which permit of the occupation of Government land on the ordinary terms as to tenure and assessment in force in the Province for land required for cultivation.

† The limit was raised from ₹5,000 to ₹10,000 in 1906. (Circular No. 13 F., dated 15th June 1906.)

* As to these see "Note on Forest Administration."

II. Those intended for the encouragement of large capitalists, European or Indian, in promoting the cultivation of important agricultural products.

III. Exceptional rules for the reclamation or colonization of particular tracts, or for the settlement of special tribes or classes of people.

16. Rules of the first class are generally made under the revenue laws of the Province and unless they involve principles of assessment they do not require the sanction of the Government of India, except in the case of Burma. In Burma all rules for the disposal of government land are made under the revenue laws, and the laws have been so framed that they, and every amendment of them must be submitted for the sanction of the Government of India. The case of Burma is separately dealt with in Appendix C.

17. Rules of the second and third class, with a few exceptions, are outside the ordinary revenue law and derive their force from special enactments * or from the instrument of lease or grant under which the lands are held. As they generally deal with large schemes, or important concessions and involve questions of policy they are submitted to the Government of India for approval. Beyond the instructions of 1873 referred to in paragraph 48 there appear to be no express orders of the Government of India requiring Provincial rules for the disposal of waste lands to be forwarded for their previous sanction, and the practice is not uniform. Submission may be necessary under the revenue law in one case (*e. g.*, Burma) while in another (*e.g.*, Bombay) the Local Government may be legally competent to issue rules without higher sanction. In the latter case, unless their submission was demanded by executive orders, or they modified accepted principles or standing instructions, no previous reference would be necessary. In other cases the procedure is regulated by long established practice. Modifications of rules sanctioned by the Government of India necessarily require the approval of the same authority, and references may thus arise on quite minor points. For instance the Punjab waste land rules sanctioned by the Government of India empowered the Financial Commissioner to grant leases of land irrigable from a

Proceedings, April 1897, Nos. 33 and 34.

* See for example the Government Tenants (Punjab) Act, III of 1893 and the Government Occupant (Sindh) Act, III of 1899.

canal up to 50 acres in each case, and the Commissioner leases up to the same limit of land not irrigable from a canal. The Local Government desired to increase the limits to 150 and 75 acres respectively, and as this involved a change in the rules the modification was referred to the Government of India for sanction.

File No. 398 of 1907.

18. For the adjudication of claims preferred to waste land proposed to be sold or otherwise dealt with on account of Government, a special Act was passed in 1863. Under this Act, when it is proposed to dispose of any land as government property, a notice of the fact is issued allowing three months for objections. If any claims or objections are received, they are investigated and settled by the Collector, whose decision is appealable to a specially constituted Court. A similar procedure is followed under the Forest laws in declaring land to be government forest. Government and private lands are now for the most part surveyed and demarcated and the private rights in the former (if any) ascertained and recorded, but the Act of 1863 is still employed when disputes arise as to the government ownership of land which has not been expressly declared by law or otherwise to be the property of the State, and which it is proposed to grant or lease.

Act XX of 1863.

Indian Forest Act, VII of 1878, section 16.

(*b*) *For non-agricultural purposes.*

19. Grants of land for non-agricultural purposes were not brought under general restrictions till 1872. In 1870 an instance came to the notice of the Government of India in which a building site of high value was granted for an educational institution without reference to them. The attention of Local Governments was drawn to the orders contained in the despatch of 1862 cited in paragraph 4 above, and they were instructed that "the sanction of the Government of India should be obtained to the alienation of all Government land, whether actually paying revenue or not, except grants of waste land made under the approved rules." These orders proved unnecessarily wide in their scope, and restrictive in their effect, and immediately resulted in the transmission to the Government of India for sanction of numerous proposals for the disposal of small patches of crown land, escheated properties and the like, which it had been customary for the local authorities to dispose of. More definite and detailed instructions were therefore issued in a resolution dated the 6th February 1872 which will be found *in extenso* in Appendix B.

Proceedings, April 30th 1870, Nos. 5A to 8.

Proceedings, August 1872, Nos. 22 to 26.

20. Briefly stated these orders require that the previous sanction of the Government of India should be obtained to—

I.—The sale of land—

	₹
(*a*) if sold for full value, when the estimated value exceeds .	10,000
(*b*) when sold for a public purpose on favourable terms, if the price recovered is less than half the full value, and in all cases in which the full value exceeds .	1,000
(*c*) in all cases of sale for less than full value to individuals for their private benefit.*	

II.—The gift or grant of land—

(*d*) for the purposes of a site for the construction at the cost of local or municipal funds of a Government school, hospital, dispensary or other public work, if the value exceeds . .	3,000
(*e*) for any other public purpose, or to a private individual for services to be performed to the State, if the value exceeds . . .	500
(*f*) for services to be performed to the community, if the value exceeds	100
(*g*) in all cases of grants to individuals for their private benefit irrespective of any services to be performed.	

21. An annual return is submitted to the Government of India by each Local Government showing in detail the sales or grants made under these instructions.

Proceedings, August 1876, Nos. 19 and 20.
Proceedings, February 1879, Nos. 5 and 6.
Proceedings, October 1896, No. 33.
Proceedings, March 1902, Nos. 7 to 9.

22. It will be apparent that in regard to the cases with which it deals, the resolution of 1872 considerably restricts the statutory powers of Local Governments in the disposal of government lands, and also their powers under the statutory rules in respect of grants of land connected with industrial or manufacturing purposes.

A discussion of this point which took place in 1897 elicited the following expression of the views of the Government of India. "It is true that by the statute referred to, Local Governments are legally competent to dispose of crown lands, subject only to the restrictions imposed by the statutory rules which were published with resolution No. 923, dated 20th February 1894 in the Department of Finance and Commerce. But legal competence does not necessarily carry with it discretionary power, which latter is regulated by the rules and orders of the Government of India. Apart from the general power of control enjoyed by the Supreme Government, it is clear from the provisions of the statute itself that such regulation is con-

Proceedings, November 1897, Nos. 7 and 8.

*This condition was added by a subsequent resolution No. 1—645-655, dated 31st August 1877.

templated; since the statute declares both the Supreme and the Local Governments to be legally competent to dispose of the property of the State, so that, as far as its provisions go, it would be possible for the same piece of land to be granted to two different individuals by these two authorities respectively."

23. The application and scope of the orders of 1872 are subject to various exceptions and interpretations. The resolution itself lays down that they do not apply to waste lands leased or granted under the special waste land rules, to service grants under special rules sanctioned by the Government of India, or to government lands which under competent authority have been constituted the property of a municipality or other local body. "Competent authority" is nowhere defined, and the resolution leaves it to the Local Governments to "satisfy themselves that the lands in question have been transferred under proper authority" and adds "this having been ascertained, the sanction of the Local Government or Administration will be sufficient for the disposal of the lands."

Proceedings, August 1872, No. 11.

24. On a reference from Coorg it was held that the orders applied to unassessed land granted as building sites to villagers, but did not apply to assessed land given for the same purpose. This ruling however does not appear to have been made general.

Proceedings, December 1879, Nos. 56 to 58.

25. "The resolution of February 1872" it was explained in 1879, "does not relate to assignments of land revenue, but exclusively to alienations of the proprietary rights in land which belong to Government."

Proceedings, July 1898, Nos. 31 to 43.

26. In 1898, it was laid down that "no alienation or assignment of land revenue can be made under the terms of Government of India resolution No. 1, dated the 6th February 1872. That resolution relates to the alienation of land alone and does not deal with land revenue. If any land alienated under its provisions (whether by sale or by gift or grant) is ordinarily assessable to land revenue, it must be alienated subject to the payment of such land revenue in full, unless the Local Government reduces or remits the revenue in exercise of powers enjoyed by it under separate rules or orders, or obtains the previous sanction of the Government of India."

27. Where State land is given in exchange for land which is private property, and is of equal value with the land given by the State, Local Governments have the same powers of disposal as in the case of

Resolution No. 5—329-340, dated 20th June 1887.

sales of lands other than waste lands, that is to say, no reference to the Government of India need be made when the value of each plot of land exchanged does not exceed ₹10,000.

28. The returns received from Local Governments having shown that a misapprehension still existed as to the scope of the orders, it was explained that the resolution of 1872, was "not intended to limit the action of Local Governments in allotting or settling land in the course of ordinary revenue administration, and it expressly disclaimed application to the disposal of land under the ordinary waste land rules. In raiyatwari Provinces the allotment of unoccupied waste is a normal feature of the administration, in zamindari Provinces where colonization is in progress, as for instance in the Punjab, waste lands are made available to the public under a definite scheme; in Burma the local authorities are empowered to make grants of land for religious or public purposes within certain limits. In all such cases action is taken under definite regulations in the Revenue department and the orders of 1872 do not extend to them." The scope of the annual return (and consequently of the resolution) was accordingly "restricted to alienations of land to public bodies, associations or individuals, whether by sale, lease or grant, which are not warranted by the ordinary rules of revenue administration in force."

Proceedings, March 1902, Nos. 7 to 9.

Transfers of land to local bodies.

29. Lands made over to municipalities and local bodies usually consist of roads, building sites, vacant spaces, and properties, such as gardens and grounds attached to buildings, which have come into the possession of Government by escheat, confiscation or inheritance from former governments. They are usually described as *Nazul*.

Proceedings, April 1873, Nos. 2 to 28.

30. An attempt was made in 1873 to frame general rules to regulate the conditions on which *nazul* properties lying within municipal limits might be made over to municipal and other local bodies, but owing to the variety of conditions prevailing, general rules were found unsuitable. The interests of municipalities in intra-municipal *nazul* vary in different Provinces and are the subject of special orders or regulations. They are generally limited to the usufruct or management of *nazul* lands, with a share in the rents or sale proceeds, and do not extend to absolute ownership. "It is now a recognized principle that where the State has not by express rule or agreement already alienated its rights in town lands, it should retain them" and

Proceedings, October 1897, Nos. 65 and 66.

that "the practice of selling or leasing government waste lands within municipal boundaries for the benefit of the municipality should be discontinued." To the sale or grant of *nazul* properties of which the ownership remains with Government and which are not governed by special rules,* the orders of 1872 apply.

Proceedings, December 1891, No. 12.

31. When government land is made over to a local authority for a public purpose the condition is attached that "should the property be at any time resumed by Government, the compensation payable shall in no case exceed the amount (if any) paid to Government for the grant, together with the cost or their present value, whichever shall be less, of any buildings erected or other works executed on the land by the local authority". General orders to this effect were issued by the Government of India in October 1891 in consequence of a case having arisen in which the Government had to pay the full value of land which had been given to a local body free of charge, though it was no longer required for the purpose for which it had been transferred.

Proceedings, March 1892, No. 4.

The condition is not, however, insisted on when the land is sold to a local body for its full market value as a business transaction.

Proceedings, March 1902, No. 5.

In 1902 the condition was made generally applicable to "all grants of such property, whether for public, religious, educational or any other purposes" with the additional proviso that "the property shall be liable to be resumed by Government if used for any other than the specific purpose or purposes for which it is granted".

Government proprietary rights in cultivated Estates.

32. In the preceding paragraphs the disposal of land of which the Government is owner has been dealt with. There is another form of State property in which the Government rights are those of a landlord or superior tenure-holder and the land is in the occupation of subordinate holders or tenants. The general policy in regard to such properties is that the proprietary right should not be parted with over the heads of the tenant occupants save for very exceptional reasons, or when the property is so small that it cannot be properly or profitably managed by government agency. It has also been ruled, with the approval of the Secretary of State, that no government estate should be sold by private contract "except by way of compromise of some dispute as to title or when there are strong political or administrative reasons for vesting

Proceedings, June 4th, 1870, Nos. 10 to 19. August 13th, 1870, No. 4.

*For an example of special *Nazul* rules see rules for the control and management of *nazul* lands in the United Provinces, page 78 of the compilation of Waste Land Rules, and Proceedings, October 1898, Nos. 13 to 16.

the proprietorship in some particular person or persons".

33. The question is of importance chiefly in Bengal where, owing to various causes, a large number of estates were and still are held by Government on a zemindari title under the general designation of *khas mahals*. For many years after the completion of the permanent settlement of Bengal the practice was to dispose of these estates in perpetuity when they came into the possession of Government. In the first quarter of the last century a change of policy took place, and, in 1824, the Court of Directors having expressed their strong disapprobation of the practice, sales and settlements in perpetuity were prohibited, except "under circumstances of a nature utterly to forbid the hope of successful management through any other arrangement." These orders continued in force till 1859, when under the pressure of financial difficulties produced by the Mutiny, orders were issued which resulted in the sale of *khas mahals* on a large scale. The orders appear thereafter to have crystallized into an ordinary rule of revenue administration in Bengal and the propriety of continuing them was not challenged till twelve years later when Sir George Campbell, with the concurrence of the Government of India and the Secretary of State, directed the cessation of further sales until the whole question of the future policy in dealing with *khas mahals* had been reconsidered.

Quoted in Proceedings, June 1877, Nos. 5 to 16.

Ibid.

Proceedings, July 15th, 1871, Nos. 34 to 40.
Proceedings, August 12th, 1871, Nos. 22 to 25.
Proceedings, April 1872, No. 30.

34. This was left for decision to his successor, Sir R. Temple, whose conclusions were, that estates which individually, or by convenient grouping, produced or were capable of producing sufficient to pay for proper management, should be retained, and that small scattered estates which did not answer these conditions should be sold on a temporary settlement tenure after the rents and rights of the subordinate holders had been settled and recorded. These conclusions, which practically reaffirmed the policy of 1824, were approved by the Government of India, who in reporting them to the Secretary of State said "it appears to us extremely inexpedient as a general rule that the Government should part with the proprietary right of which it may hereafter become possessed in land in the permanently settled districts"—an opinion in which the Secretary of State concurred. The idea of sale subject to a temporary settlement instead of a revenue demand fixed in perpetuity had, however, to be subsequently abandoned as the weight of legal opinion favoured the con-

Proceedings, June, 1877, Nos. 5 to 16.

Despatch No. 63, dated 6th September 1877.
B Proceedings, October 1877, No 41.

Proceedings, June 1875, Nos. 11 to 15.

tention that, under the Bengal law, lands to which the permanent settlement originally applied cannot be resettled on any other tenure.

35. Lists of estates selected for sale used to be reported to the Government of India for sanction from time to time, but the practice appears to have been discontinued since the Government of India sanctioned definite conditions of sale These are:—Estates which yield a rental of less than one rupee are sold free of revenue demand. Others are put up for sale with the present rent fixed in perpetuity as revenue, at an upset price equal to twice the said rent, but in cases in which bidders are not forthcoming on these terms, the revenue payable may be reduced to 75 per cent of the rental, the amount to be fixed as the upset price remaining unchanged. In exceptional cases the Local Government may sanction sale without a previous record of the rights of tenants having been made. It has been decided that the orders which apply to estates in which the Government hold full zemindari rights are also applicable to subordinate rights which Government may from time to time acquire by purchase, gift or escheat.

Proceedings, March 1886, Nos. 41 and 42.
Proceedings, June 1903, Nos. 9 and 10.

Proceedings, January 1905, Nos. 3 and 4.

36. Another Province in which the alienation of estates held in proprietary right over tenants has come under consideration, is the Punjab. In 1885 the Local Government itself laid down the principle that in such cases lands should not be granted as rewards to other parties, and that the tenants should have the right of pre-emption if the proprietary right was sold. Although exceptions have been sanctioned by the Government of India, they have expressed their approval "as a general rule" of "the principle established by the Punjab Government of avoiding the selling or granting away of government proprietary rights over the heads of cultivating tenants."

Proceedings, January 1888, Nos. 47 to 50.

Proceedings, February 1889, Nos. 33 and 34.
Proceedings, March 1890, Nos. 24 to 26.

Lands held departmentally.

37. Before leaving the subject of the alienation of government lands, and proprietary rights in cultivated estates, the question of the departmental ownership of land, and of the disposal of land compulsorily acquired for public purposes may be noticed. From the nature of the case, the former is a question of management rather than of ownership, and the general principle observed is, that the Revenue department of Local governments is responsible for the custody, management and disposal of all government lands which are not required for the use of other government departments. But the rule is capable of con-

flicting interpretations, and in a case which arose in Bombay the correct position and procedure were defined by the Government of India as follows : —

(1) "The ownership of all State lands in India vests in Her Majesty's Secretary of State, so that the property in them appertains neither to a Local Government nor to any particular department. Such lands are ordinarily administered by the Local Government of the Province in which they are situated, subject to law, to any rules made or sanctioned by the Government of India, and to the general executive control of the Supreme Government.

(2) "When any such land is made over to the occupation and management of any department of Government, it is made over for the purposes of that department, and cannot be used by it for other purposes. That department has no property in the land, its interests in it being confined to a right of occupation and user, which, however, cannot be withdrawn without the consent of the Government to which it is subordinate, whether Imperial or Provincial.

(3) "It is for the department concerned (subject to the control of the Government to which it is subordinate) to decide whether the land is still needed for its purposes ; but it is its duty to relinquish it so soon as it is no longer needed or likely to be needed for those purposes, and when thus relinquished, the land reverts to the administration of the Local Government. If in any case the Local Government is of opinion that land should be withdrawn from the occupation of an Imperial department, it should refer the matter for the orders of the Government of India.

(4) "If a department is in possession of land which it does not require for its immediate purposes, but which will so probably be required in the future that it appears inadvisable to relinquish it, the land may be let by the department concerned ; but if it let for a longer term than a year, or if a yearly term is renewed beyond the third year, or if the property is specially valuable (*e.g.*, if situated in a large town) the Local Government should, and in any case it may, be consulted by the department in possession as to the terms before final arrangements are made, since it is in the best position to advise as to the full value of the property.

(5) "These principles apply to all crown lands, whether acquired by purchase on behalf of, or by transfer to, a department, and to buildings that may be on the land.

They also apply to all cases where the property to be given up, whether temporarily or permanently, either includes the whole of a block of land in the occupation of any department, or consists of a portion which can be separated from the remainder and relinquished without inconvenience. But the principles enunciated in the two preceding paragraphs do not apply to plots of land in the midst of or adjoining an area occupied by a department, and to separate which from such area would be inconvenient, even though it cannot strictly be said that they are immediately required for the purposes of the department. The very common case of unoccupied or grass lands within the boundaries of a cantonment is an instance of this exception. In such cases the control must clearly remain with, and any lease or other temporary alienation that may be advisable must be made by, the department which occupies the general area."

Lands compulsorily acquired for public purposes.

Act I of 1894.

38. Agricultural lands are frequently acquired for public purposes under the provisions of the Land Acquisition Act, and serious injury may thus unavoidably be caused to small land holders, who lose the whole or a portion of their holding with nothing to replace it except the money compensation which they receive. The practice in regard to the disposal of lands so acquired when no longer needed for government purposes was found to be governed by no uniform principles, the rule in some Provinces being to give the original owners, or their successors, a preferential right of purchase, and in other Provinces to sell the land to the highest bidder. In consultation with Local Governments, the Government of India, in 1896, laid down the following general considerations for guidance in the disposal of agricultural and pastoral land acquired for public purposes, whether by private purchase or by compulsory acquisition, and subsequently relinquished—

Proceedings, January 1895, No. 45.
Proceedings, November 1896, Nos. 26 to 37.

(1) "In the first place, all the proprietary rights and all rights of occupancy which were extinguished by the acquisition should be first offered to the persons from whom they were acquired, or to their heirs if discoverable, the former (where both kinds of rights co-existed) being made subject to the latter under the provisions of the Crown Grants Act (XV of 1895).

(2) "In the second place, the price at which these rights are offered

should be the amount of compensation originally paid for them, less the 15 per cent. in excess of the value which will have been paid if the acquisition was compulsory. This price may be reduced, if necessary, on account of any deterioration that may have taken place in the fitness of the land for agricultural or pastoral purposes while it was in the occupation of Government, but it should not be increased, except in the case stated below, on account of any rise in its market value during that period.

(3) "In the case of plots which by reason of their size or shape are practically of no value to any one but the owners of the adjoining land, if those owners are not entitled to the first offer as above, they ought nevertheless to receive the first offer; but in that case there is no objection to asking the market-value, though the reasonable offer of a neighbouring holder should always have the preference over that of an outsider.

(4) "The superior revenue authority will, of course, always retain and exercise discretion in the application of the general rule about the charge of cost-price. Special cases will occur, and exceptions will be justifiable, as for example when the persons first entitled are remote descendants or relations of the original holders, or when the rise in the market value of the land has been so exceptionally great as to take the case out of the general rule. The Government of India lay down no hard and fast rule, but only a principle for general guidance.

"It will be observed that the above principles apply to agricultural and pastoral land only, and not to building sites or town lands.

(5) "It will be for Local Governments and Administrations to issue instructions adapted to local circumstances, in general conformity with the above consi-

derations. Those instructions will be mere executive instructions; and the greatest care should be taken to avoid anything which might have the semblance of conferring a right, or of affording a basis for any claim, either as against Government or as between private parties, and to make it clear that the concessions in question are made as an act of grace, and are wholly within the pleasure of Government to grant or to refuse in any particular case."

Alienation of revenue derived from land.

39. So far this Memorandum has dealt with the disposal of lands of which the State is the sole owner, of estates in which it stands in the position of superior proprietor, and with the incidental rights to minerals and forest produce. Attention may now be directed to alienations of the revenue derivable from land, *i.e.*, of land revenue, whether in association with the alienation of the ownership of the land on which it is assessable, or assessed, or apart from the land.

40. All land is theoretically liable to the assessment of land revenue. Hence, as already noted, it has been ruled that when unassessed land is sold or granted it should be sold or granted subject to assessment. The right to levy land revenue is one which is now jealously enforced by the Government of India, and its alienation (including in this term the partial or complete exemption from assessment, whether in perpetuity or for a term) is governed by different orders to those which relate to the sale or grant of land alone.

41. Alienation of the land revenue may take any of the following forms:—

(*a*) Permanent settlement, which fixes in perpetuity the amount of the land revenue to be paid annually.

(*b*) Redemption of the annual revenue demand, which in consideration of a lump sum releases the land from its revenue assessment for all time.

(*c*) Sale of land free of land revenue in perpetuity, where the sale price includes the right of ownership and exemption from assessment to revenue.

(*d*) Gift or grant of land revenue-free in perpetuity or for a term, conditionally or unconditionally.

(*e*) Assignment of land revenue apart from land.

These several classes of alienation will be dealt with categorically.

42. *Permanent settlements.*—Only a brief reference to this form of alienation is required here. In 1861 the question of extending the system of permanent settlements introduced in Bengal in 1793 was reopened and continued under discussion at various times till 1883, when the Secretary of State agreed with the Government of India that the idea should be formally abandoned. A review of the history of the subject is contained in the Government of India's Despatch No. 17, dated the 17th October 1882.* Permanent settlements are now confined, as already explained, to government estates in the permanently settled districts of Bengal of which the proprietary rights are sold or transferred.

*Proceedings, November 1882, No. 10. See also "Note on Land Revenue Settlements."

43. *Redemptions* —The commutation or redemption by a single payment of the government revenue assessment payable on settled estates came under discussion in 1858 as part of a policy of creating freehold tenures, and orders were issued in 1861 permitting redemptions of the revenue assessment on certain conditions. These orders were however practically recalled in the following year (1862) and redemptions were limited to "lands required for dwelling houses, factories, gardens, plantations and other similar purposes."

Secretary of State's Despatch, dated 31st December 1858.

Resolution No. 3269, dated 17th October 1861.

Secretary of State's Despatch No. 14, dated 9th July 1862.

44. The rules for the disposal of waste lands framed about this period also provided for their acquisition revenue-free in perpetuity on very easy terms. By 1871 the unwisdom of the policy of alienating the State right to levy land revenue by the creation of free holds, and of parting with crown lands wholesale, had come to be generally recognized, and the question was brought into prominence in connection with the future treatment of a vast area of unoccupied land in the Central Provinces which had been excluded at settlement from the boundaries of villages, and of which the Government had resumed possession. At the instance of the local administration, the sale of waste land in the Central Provinces was suspended in 1871 until further orders; and a case coming to notice in the Punjab of the sale of 9,000 acres revenue-free in perpetuity at R2-8 an acre, general instructions were issued in 1872 that, pending a general revision of the rules for the disposal of waste lands, no sales revenue-free in perpetuity should be permitted without the previous sanction of the Government of India in each case "excepting only such small plots, not exceeding ten acres in extent, as may

Proceedings, 22nd July 1871, Nos. 17 to 20.

Proceedings, August 1872, Nos. 97 to 102.

be required for buildings and gardens." These orders were reported to the Secretary of State, and although they did not specifically refer to the despatch of 1862, (cited above) the ten-acre limit laid down was really a limitation of the redemption of the assessment of occupied revenue paying lands permitted in certain cases by that despatch.

Proceedings, October 1897, Nos. 1 to 6.

45. In 1895, Local Governments were asked whether the orders of 1862 and 1872 were still acted upon and whether they might not be altogether withdrawn. The replies received showed that little advantage had been taken of the concession, and that opinions were generally in favour of its withdrawal. Orders were accordingly issued that "in future no redemption of land revenue for the purposes specified above shall be permitted without the previous sanction of the Government of India."

46. These orders do not affect the provisions of any rules in force locally in any Province which permit the redemption of land revenue assessed on small *nazul* plots, where the trouble and expense of collecting the assessment are disproportionate to the amount. Nor do they affect any rules already sanctioned for any Province by the Government of India authorizing, for the same reason, the sale free of revenue of small government properties which it may be necessary to sell, as for example, the petty estates in Bengal paying a rental of less than one rupee referred to in paragraph 35.

*Proceedings, September 1898, No. 37.

47. In the special cases where redemption is allowed, it is governed by the following rule laid down in the Finance Department :—" When Government is entitled to receive a periodical payment in perpetuity and existing orders authorize the commutation of that payment for a single payment, the said single payment should not be less than 30 times the amount annually paid. If the payer is not willing to commute at this rate the right to receive periodical payment should not be given up." The same resolution fixes the commutation rate for periodical payments in perpetuity *by* Government at 20 years' purchase. It should be added that these rules apply only to cases of actual commutation of payment. They do not affect any orders relating to the valuation of a grant, assessment, or other concession or demand, when such valuation is made for official purposes only, and not for the calculation of an actual payment.

* The notes to these Proceedings contain useful lists of rulings relating to the disposal of State lands and the alienation of revenue.

48. *Sales revenue-free.*—As stated in paragraph 44 orders were issued in August 1872 prohibiting the further sale of crown land revenue-free in perpetuity, except small plots not exceeding 10 acres required for buildings and gardens. In the following year further orders were circulated to the effect that "no rules involving the permanent alienation of government revenue, or the grant of waste land free from payment of government revenue for a longer period than 20 years, may in future, be made or promulgated without the previous sanction of the Government of India." In 1874 Local Governments were asked to consider the advisability of substituting sales of long revenue-free leases for sales in fee simple. All these orders had for their object the reversal of the policy of 1858 and the preservation of the State's claim for revenue on the land from being *permanently* surrendered.

Proceedings, August 1887, Nos. 97 to 102.

Proceedings, October 1873, No. 5.

Proceedings, October 1874, Nos. 1 to 3.

49. In accordance with the new policy, the waste land rules were brought under revision, and such clauses as permitted the creation of free-hold properties were eliminated. The only survivals in 1897 were certain rules in Madras and Coorg, which were amended after the issue of the orders of 7th September 1897 withdrawing the permission of 1872 for the redemption of the revenue in the case of small plots for buildings and gardens. The waste land rules now current provide for the sale of long leases revenue-free, *i.e.*, complete or partial exemption from assessment for a term of years, but not for sale outright with perpetual immunity from the land tax. No land can now be sold revenue-free in perpetuity without the previous sanction of the Government of India except in the cases mentioned in the orders of 1897 cited in paragraph 46, *viz.*, small *nazul* plots and government properties not worth retaining under government management. In 1900 the Bombay Government were authorized to sell plots of this description which had been encroached upon by owners of adjacent building sites, up to a value of ₹100 in each case; and in 1904 the Madras Government were given similar authority (without limitation of value) in respect of excess areas found in the occupation of house owners in the city of Madras.

Proceedings, October 1897, Nos. 1 to 16.

Proceedings, January 1901, Nos. 21 and 22.

Proceedings, June 1904, Nos. 1 and 2.

50. *Gifts or grants, revenue-free.*—These may be considered under the two heads (1) for public or *quasi*-public purposes, and (2) to private individuals.

As regards the first, the following rules were laid down for Madras in 1891 and

Proceedings, December 1891, Nos. 13 to 15.
Proceedings, October 1897, Nos. 1 to 16.
Proceedings, May 1904, Nos. 6 and 7.

Bombay in 1897 and were subsequently extended to other Provinces :—

(*a*) lands, such a roads and sites of hospitals, dispensaries, schools and the like, which yield no return to private individuals or local bodies and are devoted to public purposes, should be exempt from assessment to land revenue subject to the conditions: (*i*) that when the value of the land revenue proposed to be remitted, capitalized at 4 per cent., exceeds the limits laid down in Government of India resolution No. 1—141-151, dated 6th February 1872, the previous sanction of the Government of India shall be obtained to such remission; and (*ii*) that the exemption shall continue only for such time as the condition upon which it is made is fulfilled;

(*b*) lands appropriated for markets, cart-stands and similar objects from which an income is raised, should contribute their share of land revenue.

51. These orders bring the remission of revenue on lands granted for public purposes under the same limitations as grants of land, and it appears from the connected correspondence that (1) when the grant consists of land as well as of the remission of the revenue assessment to which it is liable "the market value of the plot should be ascertained in its aspect of a revenue-free holding" for the purpose of applying the limits laid down in the resolution of 1872; and (2) that the orders extend to grants to "private individuals and societies for educational or charitable purposes." The term "public purpose" as used in the above orders and in the resolution of 1872, has nowhere been fully defined, and its application in practice has not been uniform. Cemeteries are generally included, but religious objects and institutions are not, unless some educational or charitable feature is associated with them.

52. The question of assistance, whether in land or money, to religious institutions is one of ecclesiastical policy, which belongs to the Home Department, and need not be pursued here. But a reference to Appendix C will show that in 1878—85 an exception to the then recognized policy was made in favour of Burma where, within certain narrow limits, revenue-free grants may be given for religious edifices of any creed. Similar rules do not exist elsewhere, but the Burma precedent has been applied to individual cases of religious grants coming up to the Government of India for sanction.

Proceedings, August 1891, Nos. 1 and 2.
Proceedings, November 1891, No. 24.

53. In regard to revenue-free grants to private persons for the support of *quasi*-public institutions, the general view of the Government of India, as expressed in a Punjab case, is, that where the object is to assist a charitable institution, a money grant is preferable to a gift of land. "The advantage of a donation in this form" it was remarked "is, that it manifestly and obviously comes from the Government exchequer, and that it can be withdrawn directly the ruling power considers that the institution is not so managed as to meet its ends. There is however much more practical difficulty in withdrawing government support when the aid given takes the form of a grant of land. The connection of government with the institution as a contributor is then lost sight of both by the donor and the donees, and it becomes a difficult and ungrateful task to transfer the land from the occupation of the grantees when they have been in possession of it for a considerable period." Proceedings, November 1887, Nos. 41 to 46.

54. Revenue-free grants to private individuals for other than public or *quasi*-public purposes consist of grants made under the waste land rules, grants for the maintenance of village servants and officers, and personal grants. The first, as previously explained, take the form of exemption from assessment for a term of years and not in perpetuity, subject to conditions of reclamation of the land granted or leased. The second are made under revenue rules and continue only so long as the service for which they are given is rendered. The general policy in respect of such grants, where the service is rendered to the administration, is to substitute a cash allowance for land. The third class of grants exists in considerable numbers as legacies of Native rule o of the policy of early British administ ut the creation of fresh personal ts is now strictly limited and in all cases requires the sanction of th ment of India. In regard to such c ey have held that "the greatest ca io. ould be observed in parting with State perty to private individuals otherwise t at its full value, and that free grants of land should only be permitted under very exceptional circumstances of political expediency." In three instances only are personal revenue-free grants regulated by special rules which dispense with the condition of previous reference to the Government of India. Proceedings November 1887, Nos. 41 to 46.

Proceedings, November 1892, Nos. 24 and 25.

55. The first of these is a concession to powers long enjoyed by the Punjab Government (without express delegation from the Supreme Government) of creating new *muafis* or revenue free holdings at the resettlement of a district. "This" it was explained "has been done for special political or administrative reasons, and the individual and aggregate value of the grants has always been insignificant." In laying down new rules defining the powers of the Punjab Government to continue lapsed revenue assignments and grants, the Government of India formally regularized this practice by conferring on the Local Government "authority, subject to the confirmation of the Government of India, to sanction the grant at settlement of fresh *muafis*, not exceeding ₹100 per annum in value each, for life or for the term of settlement." The grants made are reported in tabular statements for the confirmation of the Government of India at the conclusion of the revenue settlement of a district.

Proceedings, June 1893, No. 22.
Proceedings, November 1893, Nos. 35 and 36.

56. The second case is that of grants made to native officers of the Indian Army in recognition of exceptional and distinguished service. In this case the maximum number of rewards to be granted annually is fixed at nine, and the maximum value of any reward at the equivalent of ₹400 per annum clear, or of ₹600 if made in the form of an assignment of revenue. The officers on whom they are to be conferred are selected by the Government of India upon the recommendation of the Commander-in-Chief, and their names and the value of the reward sanctioned are communicated to the Local Governments concerned who decide in what form the grant should be made.

57. When the Local Government is prepared to provide a grant of land and the grantee accepts this form of reward, it is open to the Local Government to arrange for the bestowal of the privileges connected with the grant in such a way that the difference between the value of the grant on the terms given and the market value, may amount approximately to 25 times the annual value specified in the orders of the Government of India in each case, that is, the land may be valued and granted revenue free or subject to assessment; but in either case the total market value of the grant must not exceed the limit stated. Should the Local Government not be prepared to give land, or the grantee be unwilling to accept his reward in this form, the grantee is given an assignment of revenue from any village or estate that may be selected.

If an assignment of revenue is given, it is limited to three lives only, the first heir receiving half, and the next heir in succession a fourth of the original grant. The succession is settled by the District Officer subject to confirmation by the Commissioner of the Division, or in Madras, by the Board of Revenue. The assignment is fixed in cash and not in terms of land revenue, the latter being subject to variation. When the grantee is a landholder, the assignment may take the form of a remission of a specified amount of the revenue due from himself.

58. In the third case, the Government of India have directed that a Local Government may, without reference to them, "in recognition of special service rendered to the Police or to the criminal administration by a private person, inclusive of a village headman or watchman, make a gift to that person or to his heir of a value not exceeding ₹500, or may grant him, or his heir, or widow an assignment of land revenue not exceeding ₹15 a year for one life, or for a term of 25 years, whichever period may be the longer. The grant may be made partly in the form of a gift of land and partly in the form of an assignment, either of the land revenue of that land, or of other land; but the total estimated value of the grant should not exceed ₹500." Such grants are subject to the condition that they must not be alienated without the sanction of the Collector and, when in the form of an assignment of land revenue, they are also subject to the condition of loyalty and good conduct.

Proceedings, June 1906, Nos. 6 to 9.

59. *Assignment of land revenue.*—The orders governing the grant of land revenue-free are also applicable in principle to the assignment of land-revenue apart from the land upon which it is assessed. The Government of India are strongly opposed to the assignment of land revenue to local bodies and issued the following ruling on the subject in 1879:—

"The Governor General in Council" it was stated "is aware of no reason why land revenue should not be levied upon lands attached to private residences or covered with buildings as much as upon arable or pasture lands. There is no foundation for the claim to exemption from the payment of land revenue advanced in favour of the residents of Ellichpur, and that claim must be emphatically disallowed. Further, His Excellency in Council desires again that care may be taken that the assignment to the

A Proceedings, February 1880, No. 79.

Ellichpur municipality of the revenue from the lands within municipal limits be not quoted as a precedent for like grants in future. Municipalities have no claim to the assignment of the land revenue assessed upon lands within their limits, which, like all land revenue, is an imperial asset. The Governor General in Council is wholly opposed to the alienation of this revenue to municipalities, and no such alienation should be made hereafter".* The principle laid down in these orders that the claim of the State to land revenue on town lands should be strictly maintained was re-affirmed in a resolution issued in 1895 prescribing the principles to be followed in their assessment.

A Proceedings, October 1895, Nos. 27 to 38.

60. Assignments of land revenue in favour of individuals as personal grants have already been dealt with in paragraphs 54 to 58, and there do not appear to be any rulings of general application on the subject apart from revenue-free grants of land. The financial rule applicable to them is that which governs the expenditure of all public funds, *viz.*, that it must not be "for the advantage of any individual or body of private persons unless in accordance with some declared or established rule or principle recognized by the Government of India."

Financial Resolution No. 3531 A., dated 11th August 1897.
Proceedings, July 1898, Nos. 31 to 42.
Proceedings, March 1902, Nos. 7 to 9.

61. To enable the Government of India to keep themselves informed of the extent to which land revenue has been assigned or alienated, two annual returns are required from Local Governments. The first of these is submitted annually to the Government of India and shows the total amount alienated or assigned during the year (1) in perpetuity or during the maintenance of an institution or office, (2) for life or lives or for a fixed term, under the following heads:—

I.—For the maintenance of public servants.

II.—For other public or *quasi*-public purposes.

III.—For private benefit.

Continuance of revenue-free grants and assignments.

The second statement is prescribed for inclusion in the annual Provincial administration reports and is intended to give similar information for all existing assignments and alienations. These statements supplement the return referred to in paragraph 21, of lands sold or granted under the resolution of February 1872.

62. It remains to notice the subject of the continuance of revenue-free grants

* This principle is more widely expressed in Financial Resolution No. 3531-A., dated the 11th August 1897, paragraph 4(9) (Civil Account Code, page 122).

and assignments which lapse to Government from time to time.

Grants of land wholly or partially free of revenue, assignments of the land revenue, cash allowances in lieu of lands, offices, or privileges which have been resumed, exist as has been in considerable numbers throughout India. They are generally governed by the terms of the deed, instrument, or rule under which they were made, or in the absence of such documents, by the decisions recorded at the periodical settlement of the land revenue when privileged tenures come under regular enquiry. They may be grants in perpetuity with or without limitation to lineal descendants, or for one or more lives, or in the case of charitable, religious, and educational endowments, for as long as the original object is carried out.

The resumption of these privileges in accordance with the strict letter of the conditions upon which they are held is frequently productive of hardship, particularly in cases where they form the main dependance of the families of the deceased grantees. It has therefore been necessary to invest Local Governments with some discretion to continue them for a further period. The existing rules on the subject will be found in Appendix D.

Conclusion.

63. The conclusions to be derived from the foregoing examination of the various orders regulating the alienation of government lands and rights may now be stated. Under the feudal system prevailing under Native Rule, when money was scarce and land plentiful, a grant of land or of rights appertaining to land, variously called *inams, muafis* and *jaghirs* was a common and favourite form for bestowing the royal favour, for rewarding service, for the support of office, for the maintenance of educational, charitable and religious institutions, and for almost every conceivable purpose. Wherever British rule was substituted, these grants were investigated and either continued or confiscated ; but the practice of land grants did not cease, and they continued to be more or less freely given in the earlier days of British Administration on grounds of political expediency, as rewards for loyalty and exceptional service and for the encouragement of new agricultural industries. It was not till some years after the Mutiny that the value of land as an imperial asset began to be fully realized, and when stock came to be taken of the position, it was found that, not only were there rules permitting the alienation of large areas of the crown pro-

perty in freehold under the discredited policy of 1858, but that very lax notions prevailed amongst Local Governments on the subject of land grants, and there were no orders limiting their discretion.

64. The first enunciation of the principle that a grant of land involving a surrender of the government dues was on the same footing as expenditure from the revenue of India, came from the Secretary of State in 1862; but it was not till ten years later, when the examination above referred to had revealed the necessity of intervention on the part of the Supreme Government, that the principle was actively enforced. The restrictions then and subsequently imposed by successive orders on the freedom of Local Governments in disposing of crown property are, in almost all cases, directly traceable to action on their part contravening the orders of the Secretary of State and displaying an imperfect appreciation of the potential value of grants in the shape of land. Alienations were permitted which took no account of the prospective rise under settled government of the value of immoveable property, and which even at current valuation represented gifts which, if made from the public treasury, would have been beyond the competence of local authority. It is therefore not surprising that the restrictions of the Government of India reduced the discretion of Local Governments to the narrowest limits.

65. At the present date, when Local Governments possess large financial powers, they are perhaps in some respects too narrow; this has been recognised and the question of raising the limits within which grants may be made is already under consideration. There are, however, two reasons which make any comparison between the power to spend revenue and the power to grant land and its revenue inappropriate. The exercise of the former is recorded in the public accounts and comes under independent audit. The exercise of the latter does not appear in the public accounts, and the submission of returns to the administrative departments of the Supreme Government is an ineffective substitute for regular audit. The question whether these land transactions could not in some way be made to pass through the public accounts was considered in 1872, but the idea was declared unfeasible. A greater difference, however, lies in the fact that money and land are not the same thing: one has a definite value and its payment can be easily stopped, the other has a prospective value generally

far in excess of its current market price, and cannot easily be resumed. The reasons for granting land in preference to money are, the popular sentiment attaching to the former, political considerations, and in some cases the convenience of the State. The power to make such grants must, it would appear, always be more restricted than the power to control expenditure of revenue.

66. Owing to the scattered nature of the orders in force and the numerous reservations and exceptions to which they are subject, it is a matter of some difficulty to reduce them to general principles or to extract from them a clear statement of policy of general application, but the following summary is offered as an attempt in this direction.

I. The alienation of crown lands (other than reserved forests) for purposes connected with agriculture, under a temporary settlement on the ordinary terms as to tenure and rate of assessment, provides for a normal and necessary expansion of cultivation, is open to no objection, and calls for no restriction.

II. In the disposal of lands outside the ordinary demands of cultivation, regard should be had to the future needs of a growing population. Subject to this general consideration, special encouragement may be offered for the agricultural settlement or reclamation of remote or unhealthy tracts of crown land, or for the cultivation of special products requiring the expenditure of capital. In such cases the concession should take the form of a reduction of the full price of the cultivating or proprietary rights, long leases with a total or graduated exemption from assessment for a term of years and, in the case of special products, a guaranteed limitation, if necessary, of the assessment rates to those levied on ordinary cultivation. The special terms should not involve a larger sacrifice of revenue, present or prospective, than is necessary for the attainment of the object in view ; and the State's rights in underlying minerals should always be carefully safe-guarded. In no case should the right to levy land revenue and to periodically revise the assessment be parted with.

III. The alienation of crown lands for non-agricultural purposes, and of the income derivable from them, should be treated on the same principles as the expenditure of public money. If the land is sold, it should be sold for its full value, that is, the highest price procurable in the

open market; if it is assessable to revenue, it should be sold subject to the payment and periodical revision of such assessment; if for any reason it is not assessable to revenue, its full value should be calculated in its revenue-free aspect. Where anything less than full value is demanded, the difference should be regarded as a gift or grant of public revenue.

Financial Resolution No. 3531-A., dated 11th August 1897.

IV. "It is a general condition, precedent to the delegation of all authority to disburse public money, that it shall be *bonâ fide* for a public object; nothing must be carried out by means of the public funds for the advantage of any individual or body of private persons, unless in accordance with some declared or established rule or principle recognized by the Government of India." This condition is equally applicable to the sale or grant of crown land on favourable terms (for purposes other than agriculture) to individuals or communities Such concessions are, as a rule, only permissible under very exceptional circumstances of political expediency, and they should not include a perpetual exemption from the liability to pay land revenue.

V. Where crown land is required for an approved public or *quasi*-public purpose, payment of the whole or a portion of the full value may be remitted, and the land may be exempted from revenue assessment if the circumstances are such as would justify an equivalent grant from the public revenues, and on the same conditions, *viz.*, that the concession endures only so long as the public purpose is maintained, and is withdrawn if the land is put to any other use; and further, that it may be resumed by Government for its own purposes on repayment of the sum (if any) originally received, plus the cost of standing buildings or improvements. In general, where State assistance is given, it is preferable that it should take the form of a grant of money rather than a grant of land revenue-free.

VI. The transfer to local bodies, including municipalities, of crown lands within their jurisdiction should be treated on the same footing as a transfer of public revenues. If the land is transferred for public purposes it may be given free or on payment of less than the full market value and the revenue assessment may be remitted, the extent of the concessions being determined by their pecuniary value; the transfer should be subject to the conditions as to user and resumption applicable to grants to private individuals or communities for similar purposes. No crown land should be transferred to local

bodies with the object of increasing their resources at the expense of general revenues, nor should any arrangement be made in connection with the disposal of crown land which would have that result, except under conditions which would justify a contribution from such revenues; and in no case should the land revenue assessment be alienated for the benefit of local bodies. Building sites in cities and towns should be assessed to land revenue under the rules applicable to them. The ownership of crown lands in cities and towns which are likely to be required for government purposes should not be alienated.

VII. The sale or transfer to third parties of the proprietary rights of Government in estates in which it stands in the relation of superior proprietor to cultivating tenants is, as a general rule, undesirable, and should be permitted only when the property is so small or scattered, or the conditions are such as to make successful government management impossible. When such estates are sold, they should, in the first instance, be offered in proprietary ownership to the actual occupiers, and in the event of their being sold or granted to a third party, due measures should be taken to record and protect the rights of the tenants. Except by way of compromise of some dispute as to title, or when there are strong political or administrative reasons for vesting the proprietorship in some particular person or persons, estates of the description here referred to should not be sold by private contract.

A. R. TUCKER.

APPENDIX A.

Extract from the Proceedings of the Government of India, Finance and Commerce Department, No. 933 Ex., dated Calcutta, the 20th February 1894.

RESOLUTION.—In supersession of the orders contained in the Financial Resolution of the 20th October 1888 and letter of the 21st February 1890, cited in the preamble, the Governor General in Council is pleased to issue the following rules, prescribed by Her Majesty's Secretary of State for India, to regulate the power of the Government of India and of Local Governments and Administrations to enter into or sanction contracts and agreements involving liabilities on the part of the State.

Statutory Rules.

The following provisions and restrictions are prescribed by the Secretary of State in Council, in exercise of the power reserved to him by Statute 22 and 23 Vict., Cap. 41, section 1, and shall apply to all concessions, grants, leases, and contracts (except such as may be made under any special legislative sanction) made or entered into by the Government of India, or by a Local Government or Administration or other authority in India, to or with any person, firm, company, syndicate, municipality, or other public body who or which has applied for the same for mining, milling, or any other industrial or manufacturing purposes (not being ordinary agricultural or settlement purposes), or for the purpose of any railway, tramway, water-works, or other undertaking of a like nature :—

I.—No concession, grant, or lease of land, of mineral or forest rights, of right to water power, or of right of way or other easement, or of any privilege in respect of land, of mineral or forest rights, of right to water power, or of an easement, and

no contract involving the execution or maintenance by Government of works,

shall be made or entered into by the Government of India to, with or in favour of any person, firm, syndicate, company, municipality, or other public body for any of the purposes above mentioned without the express sanction of the Secretary of State in Council,—

if such concession, grant, lease, or contract

(*a*) is intended to endure for a period exceeding ten years, and is not accompanied by an unconditional power of revocation or cancelment by the Government of India at any time during such period on the expiry of six months' notice to that effect, and imposes on the revenues of India an annual liability in excess of fifty thousand rupees ; or

(*b*) imposes on such revenues a charge or expenditure or liability to damages in excess of twelve lakhs of rupees ; or

(*c*) involves the cession of property or rights of which the estimated value exceeds twelve lakhs of rupees.

II.—No concession, grant, or lease of land, of mineral or forest rights, of right to water power,

or of right of way or other easement, or of any privilege in respect of land, of mineral or forest rights, of right to water power, or of an easement, and

no contract involving the execution or maintenance by Government of works,

shall be made or entered into by any Local Government or Administration or other authority in India to, with, or in favour of any person, firm, company, syndicate, municipality, or other public body for any of the purposes above mentioned without the express sanction of the Government of India and of the Secretary of State in Council,—

if such concession, grant, lease, or contract

(*a*) is intended to endure for a period exceeding ten years, and is not accompanied by an unconditional power of revocation or cancelment by the Government of India at any time during such period on the expiry of six months' notice to that effect, and imposes on the revenues of India an annual liability in excess of fifty thousand rupees; or

(*b*) imposes on such revenues a charge or expenditure or liability to damages in excess of twelve lakhs of rupees; or

(*c*) involves the cession of property or rights of which the estimated value exceeds twelve lakhs of rupees.

III.—No such concession, grant, lease or contract shall be made by any Local Government or Administration or other authority in India to, with, or in favour of any person, firm, company, municipality, or other public body for any of the purposes above mentioned without the express sanction of the Government of India,—

if such concession, grant, lease, or contract

(*a*) is intended to endure for a period exceeding five years, and is not accompanied by an unconditional power of revocation by the Government at any time during such period on the expiry of six months' notice to that effect, and imposes on the revenues of India an annual liability in excess of five thousand rupees; or

(*b*) imposes on such revenues a charge or expenditure or liability to damages in excess of one lakh of rupees; or

(*c*) involves the cession of property or rights of which the estimated value exceeds one lakh of rupees.

IV.—No such concession, grant, lease, or contract shall be made by any Local Government or Administration or other authority in India to, with, or in favour of any joint stock company, except with the sanction of the Government of India, and subject to these rules so far as the same may be applicable.

V.—No transfer of any such concession, grant, lease, or contract, or of any part thereof, or any interest therein, or any under-letting, shall be recognized as valid except it be made with the express assent of—

(*a*) the Secretary of State in Council in cases falling within Rule I or II;

(*b*) the Government of India in cases falling within Rule III; and

(c) the Local Government or Administration in any other cases; with the proviso that a transfer or under-letting to a company will in all cases require the sanction of the Government of India.

And the Secretary of State in Council and the Government of India, as the case may be, may in his or their absolute discretion refuse such assent.

VI.—In every writing intended to express any concession, grant, lease, or contract which falls within these Rules, it shall be expressly declared that such concession, grant, lease, or contract is granted or made subject to them.

VII.—When the assent of the Secretary of State in Council is rendered by these Rules necessary to the validity of any concession, grant, lease, or contract, or to the transfer thereof, it shall be signified under the hand of an Under-Secretary of State; and when the assent of the Government of India is so required, it shall be signified under the hand of a Secretary of that Government.

VIII.—The foregoing Rules, I to VII inclusive, shall not apply to any concession, grant, lease, or contract for any of the purposes mentioned in Rule I, if made under any special rules issued or approved by the Secretary of State in Council.

Supplementary Rules.

Rule A.—In cases where it is considered expedient to grant concessions or to make agreements, such as those contemplated in the Statutory Rules, the deed of concession, or the agreement if the rights under it are transferable, must be so framed that it will be beyond the power of the grantees or contractees to transfer their rights or any part of them, except with the sanction of the Government of India, or of Local Governments and Administrations in cases coming within their cognizance.

B.—All such concessions and agreements will further be subject to any special provisions made by Government to meet particular cases or particular classes of cases.

C.—Before any concession or agreement of the class referred to is submitted for the approval of the Government of India, its terms should be considered in the Judicial Department of the Local Government, and by the highest legal adviser to that Government.

D.—The foregoing Rules shall not apply to any concession, grant, lease, or contract for any of the purposes mentioned in the Statutory Rules, if made under any special rules issued or approved by the Secretary of State in Council.


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APPENDIX B.

Extract from the Proceedings of the Government of India in the Department of Agriculture, Revenue and Commerce, No. $\frac{1}{141\text{-}151}$, *dated Fort William, the 6th February 1872.*

[LAND REVENUE AND SETTLEMENTS.]

READ again—

Financial Department Resolution No. 557, dated 25th January 1870.

Home Department Circular Resolution No. 229—39, dated 27th April 1870.

Financial Department Resolution No. 1452, dated 23rd June 1870.

Home Department Circular No. 427—36, dated 4th July 1870.

RESOLUTION.

IN the Resolutions quoted above it was ruled that the sanction of the Government of India should be obtained to the alienation of all Government land, whether actually paying revenue or not, except grants of waste land made under the approved rules, and that Government land, whether paying revenue or not, should not be parted with save under the rules applicable to the expenditure of public money. It was also laid down that if the sale of small plots of escheated land for the benefit of local funds has not been duly sanctioned, it must be considered subject to the above restrictions.

2. Several Local Governments and administrations having represented the inconveniences arising from a strict adherence to these orders, the Governor General in Council has been pleased to modify them as follows:—

3. Lands to be disposed of will necessarily divide themselves into two classes—

First—Those which are the property of the State;

Second—Those which, under competent authority, have been constituted the property of a municipality or other local body.

4. Lands of the first class may be disposed of in various ways—

First—By sale at full market value;

Second—By sale on favourable terms—
to a public body or association, or to an individual, for a public purpose;

Third—By gift or grant to—

(*a*) a public body or association, or to an individual, for a public purpose;

(*b*) private individuals in remuneration for public services to be performed;

(*c*) private individuals for their private benefit, without reference to future services.

5. As regards lands falling into the second of the above classes, which have been, under a competent authority, constituted the property of a local body, the Government of India will exercise no interference. It will be the duty of Local Governments and Administrations to satisfy themselves that the lands in question have been transferred under proper authority, and, this having

been ascertained, the sanction of the Local Government or Administration will be sufficient for the disposal of the lands.

6. As regards lands, the property of the State, such of them as are governed by the rules for the grant of waste lands, will continue to be dealt with under the rules on this subject in force for the time being.

7. As regards lands, the property of the State, other than waste lands, which are sold for full value, no reference to the Government of India need be made where the full value does not exceed ₹10,000. Up to this amount the sanction of the Local Government or Administration will in all cases be sufficient. The amount realised by the sale of the land should invariably be credited to the general revenues, and the sale should be duly noticed in the Proceedings of the Local Government or Administration.

8. As regards the sale of lands on favourable terms, for a public purpose, in no case should the recipient pay less than half the full market value of the lands granted; and whenever such full value exceeds the sum of ₹1,000, the sanction of the Government of India should be previously obtained. The amount realised by the sale should in all cases be credited to the general revenues, and the sale should be noticed in the Proceedings of the Local Government or Administration.

9. As regards the gift or grant of lands, the previous sanction of the Government of India should be obtained in cases where the value of the grant exceeds ₹3,000 when given as a site for the construction of Government Schools, Hospitals, Dispensaries or other public works, at the cost of recognised local funds; where it exceeds ₹500, when given for any other public purpose, or to a private individual for services to be performed to the State*, or where it exceeds ₹100 when the services are to be performed to the community; and in *all* cases of grants to individuals for their private benefit, irrespective of any services to be performed.

*N.B.—This does not refer to cases in which the Local Governments may have been separately authorised to dispose of lands under special rules sanctioned by the Government of India.

APPENDIX C.

Rules in Burma for the disposal of State lands.

Lower Burma.

The Lower Burma Land and Revenue Act, II of 1876, section 18, empowers the Lieutenant-Governor to make rules for "the disposal by way of grant or otherwise" of Government lands, and proceeds,

such rules may provide among other matters for the following :—

(*a*) The amount or kind of interest to be created in such land and the conditions (if any) subject to which such interest may be conferred.

(*b*) The mode in which grants and other dispositions of the land may be made.

(*c*) The total or partial exemption either absolutely or subject to conditions, of the land from revenue for a term of years, or for any life or lives, or during the maintenance of any institution.

(*d*) The realization of any money payable in consideration of the grant or other disposition, or of any penalty payable on breach of a condition annexed to such grant or disposition, as if it were an arrear of revenue due in respect of the land by the person taking under the grant or disposition, his legal representatives or assigns.

Under section 19, the Lieutenant-Governor may also make rules to regulate the temporary occupation of Government lands.

2. Rules made under these sections, and in fact all rules made by the Lieutenant-Governor under the Act, require, under section 60, the previous sanction of the Governor General in Council. The power to make rules under sections 18 and 19 may, under the provisions of the Act (XVIII of 1888) creating the office of Financial Commissioner in Burma, be delegated by the Lieutenant-Governor to the Financial Commissioner; but apparently this has not yet been done.

3. It is unnecessary to examine here the rules which have been framed for the disposal of land for agricultural purposes, or for the cultivation of special products, as they do not differ in principle from the rules generally in force elsewhere, except in one particular, *viz.*, that a restriction is placed on grants and leases of land for ordinary cultivation to non-Burman applicants. The rule is—

Rule 16 (*b*).

"Without the previous sanction of the Financial Commissioner no grant or lease shall be made to any person who is not a native of Burma,

when the area to be granted or leased, or its addition to the area already held, would give such person a total area in excess of 50 acres."

A similar rule exists in Upper Burma, and it was introduced into the Lower Burma rules in 1890 by the Local Government. The origin of the rule is explained in paragraph 10 *et seq.* below. Proceedings, June 1890, Nos. 83 to 87.

4. For religious and public purposes lands are granted in accordance with the following rules framed under section 18 of the Act.

32. The Deputy Commissioner may grant free of land revenue (if any), a site for a religious edifice :—

(*a*) on his own authority, if the value of the site does not exceed ₹100 ; and

(*b*) with the previous sanction of the Financial Commissioner, if the value of the site exceeds ₹100, but does not exceed ₹200.

In calculating the value of a site for the purposes of this rule, the land revenue which is, or would be, assessed on the land if under cultivation shall be capitalized at twenty-five times the annual assessment, or, if the land is not liable to assessment, the market value of the land shall be accepted.

EXPLANATION.—It is not intended that the capitalized value of the land revenue referred to in this rule shall be paid by the grantee ; the land revenue is to be capitalized only in order that it may be ascertained whether the total value of the site falls within the authority to sanction such grants hereby conferred.

33. Cases in which the value of the land exceeds ₹200 must be submitted for the orders of the Government of India.

34. Rules 32 and 33 are applicable, whatever the religious creed may be for the purpose of which the grant is made.

35. Subject to the sanction of the Financial Commissioner, the Deputy Commissioner may make a grant free of revenue, for a public purpose,* of waste land which is not being assessed to land revenue and the value of which does not exceed ₹100. The value of the land shall be determined in the manner stated in Rule 32.

36. Any land granted under this chapter will be resumable if at any time it be used for any other purposes than those for which it was granted, or if the buildings are used for any other than religious or public purposes.

5. The above rules, so far as they concern the grant of land for religious edifices, constitute a special relaxation of the general orders of February 1872, referred to in paragraph 20 of the Memorandum, since churches, temples and other institutions devoted exclusively to religion are not regarded as "public purposes" within the meaning of those orders. The policy of Government towards religious institutions is one of strict neutrality.

* *e.g.*, for a *Zayat* (rest house), tank, well or burial ground. This rule is a delegation of the Local Government's powers under the resolution of February 1872, and was introduced with the approval of the Government of India in 1897 (Proceedings, April 1897, Nos. 35 to 40.

In Burma a practice, based on the custom of the former Government, had grown up of granting sites freely for Buddhist religious edifices and the restrictions imposed by the orders of 1872 resulted in a representation from the Local Administration which brought the whole question of religious grants in Burma under discussion. It was recognized that the practice was not in accordance with general policy, but in consideration of the strong Burmese sentiment on the subject, and of the fact that Buddistic institutions are also partly educational in their character, primary instruction being to a very large extent in the hands of the Buddhist priests, the Government of India decided in 1878 to permit its continuance. A difficulty was, however, felt in differentiating between different creeds in the same Province, and the following rules, which were sanctioned at the time, were consequently made applicable to grants for religious purposes generally.

Proceedings, September 1885, Nos. 16 to 22.

I.—Deputy Commissioners may make grants of building sites for religious edifices on land paying no revenue where the value of the land does not exceed ₹100, subject to the confirmation of the Chief Commissioner, to whom a monthly statement of such grants should be furnished from each district.

II.—The Chief Commissioner may make similar grants where the value of the land does not exceed ₹500.

III.—Cases in which the value of the land exceeds ₹500 must be submitted for the orders of the Government of India.

IV.—All lands so conveyed will be resumable if the buildings are applied to any other purposes than those for which the free grant of land was made.

V.—The foregoing rules are applicable, whatever the religious creed may be for the purposes of which any building site may be granted.

6. The rules, it will be observed, only permitted of the grant of land paying no land revenue. In revising the rules under the Land and Revenue Act in 1884, the Local Government proposed to extend them to grants of assessed land, subject to the condition that the grantee should redeem the revenue assessment at ten years' purchase. It was explained that the levy of revenue on land devoted to religious purposes was opposed to the custom of the country, and the Local Government was itself in favour of remitting the assessment altogether. This proposal raised afresh the whole question of policy, and, after much discussion, it was decided that the Local Government should be

given power "to grant land of any description (*i.e.*, assessed) for religious purposes up to the value of R200, including capitalized value of land assessment (if any) on condition that if the land is assessed, the land revenue is to be redeemed at 25 years' purchase." The decision permitted the Local Government to grant land, whether revenue-free or revenue-paying (subject in the latter case to a lump payment in commutation of the assessment), but reduced the limit up to which grants might be made under the previous orders.

Proceedings, September 1885, Nos. 16 to 22.

An arbitrary limit of R200 was fixed because, while enabling the Local Government "to deal with the customary grants which from time immemorial have been made by the ruling power for religious purposes in Burma and which rarely exceed this limit of value," it would "for the most part exclude the large grants which are applied for by foreign religious and missionary bodies" and, it may be added, which were often too readily supported by the Local Government.

7. The ruling that land assessed to land revenue should not be granted free of payment, appears to have aroused strong feelings amongst the Burmese Buddhist community, and upon the earnest representation of the Local Government, the Government of India withdrew the condition that "where the land is assessed to land revenue, the grantee may redeem the land revenue at 25 years' purchase," and the rules thus assumed their present form. By substituting the "Financial Commissioner" for the "Lieutenant-Governor" the Local Government has, however, delegated all its powers under the rule to the former.

Proceedings, March 1886, Nos. 17 to 24.

8. The rules framed under the Act also deal with grants of land for tanks or burial grounds, and of leases for building sites. They empower revenue officers to make small grants of land for these purposes, but they are made subject to a liability to assessment, so that if land is required for a tank, or a burial ground, and it cannot be dealt with under Rule 35 quoted in paragraph 4 above, as "waste land which is not being assessed to land revenue," it must continue to pay the assessment. Any proposal to remit the assessment, or to exceed the limits of area laid down in the rules, requires the sanction of the Government of India as no powers are reserved to the Local Government or Financial Commissioner. The rule as it stands entails numerous petty references to the Government of India. Thus, in December last, the Local Government had to refer an application from a section of

Rule 37.

the Chinese community for the grant for the purpose of a cemetery of a plot of 4 acres, revenue-free, of an estimated value of R187-8, though, if the same land had been required for a religious edifice, it might have sanctioned the grant itself.

In the case of building sites there are special rules which, on being extended to any area by the Local Government, give the Financial Commissioner authority to sanction a lease of land for a period not exceeding 30 years "for building or industrial purposes, or purposes other than cultivation" without limit as to area.

Rule 87 A.

UPPER BURMA.

9. Under section 26(1) of the Upper Burma Land and Revenue Regulation, III of 1889, the Financial Commissioner has power to make rules—

(*a*) for the disposal by way of grant or otherwise of any State land which is waste;

(*b*) for regulating the temporary occupation of such land; and

(*c*) for the allotment from such land of grazing grounds to the inhabitants of any village in the neighbourhood thereof whom he considers to stand in need of such allotment, and the regulation and control of the use of such grazing-grounds by persons permitted to graze their cattle thereon.

But it is further provided that "such rules shall not take effect until they have been approved by the Governor General in Council." Section 51 (2) declares that "rules made by the Financial Commissioner under this Regulation shall not take effect until they have been sanctioned by the Local Government." In respect to rules made by the Financial Commissioner under section 26(1) the Supreme and Local Governments therefore appear to have concurrent jurisdiction. The inconvenience of a provision of law which allows rules purporting to regulate the action of the Local Government to be issued under the authority of the Financial Commissioner was noticed in 1897, and the point was noted for consideration when next the Regulation came under revision, but no change has yet been made

Proceedings, November 1897, Nos. 7 and 8.

10. As stated in paragraph 3, the Upper Burma rules for the lease of land for ordinary cultivation make a distinction between Burman and non-Burman applicants. In 1890 the Government of India sanctioned special rules which had for their object (1) the colonization of some of the waste land in Upper Burma with immigrants from Behar and Chota Nagpur,

Appendix I and II, Revenue Manual.

and (2) the grant of land on special terms to time-expired men of the Upper Burma Military Police (a foreign force) to encourage them to settle in Burma. These rules were considered by the Local Government to sufficiently provide for the case of natives of India wishing to settle as agriculturists in Burma, and in the rules under the Land and Revenue Regulation framed about the same time, the lease of land for cultivation on ordinary raiyatwari terms was restricted to natives of Burma. No limit was placed on the area which might be leased to a Burman applicant, except that allotments of more than 100 acres required the sanction of the Financial Commissioner.

Proceedings, September 1891, Nos. 43 and 44.

11. In 1895 two Eurasians, technically natives of Burma, applied for a large allotment on Burman terms, and this raised the general question whether large areas should be given to parties intending to cultivate with Burman tenants: in other words, whether the creation of a landlord class should be permitted in Burma. The Local Government expressed itself in favour of keeping the country raiyatwari as much as possible, and in this view the Government of India agreed. To give effect to this policy, the area which the District Officer was empowered to lease to a Burman without previous reference was reduced from 100 to 25 acres. At the same time, to provide for the case of Chinese market gardeners and the like, a rule was added permitting a cultivating lease to non-Burmans up to 10 acres. No leases of land in Upper Burma can be transferred or charged in favour of a non-agriculturist, or to a person who is not a native of Burma, without the previous sanction of the Township Officer.

Proceedings, February 1895, Nos. 17 and 18.

Proceedings, December, 1895, Nos. 17 to 19.
Proceedings, February 1896, Nos. 30 and 31.

Rule 40 (iii).

12. The rules forwarded by the Local Government and sanctioned by the Government of India made no provision for the grant of land to other than natives of Burma for non-agricultural purposes, and made every deviation from the conditions prescribed for leases subject to the previous sanction of the Governor General in Council. In 1897 the Local Government proposed that it should be vested with power to make leases and grants of land, except revenue-free grants, on other conditions than those prescribed by the rules, subject only to such restrictions as the Government of India might, from time to time, prescribe by executive order. The Government of India, however, felt "some hesitation in investing a Local Government with absolutely unlimited power in the matter", but they sanctioned the inser-

Rule 38.

Proceedings, November 1897, Nos. 7 and 8.

tion of the words "and for other purposes by the Local Government" in the rule, which now runs as follows:—

Leases of State land which is waste may, for the purpose of cultivation only, be made to persons other than natives of Burma by the Collector, and for other purposes by the Local Government. Provided that no lease shall be made to any person, or set of persons, of an area exceeding 10 acres, and that no greater area shall be leased than will make up the total of the land held by the person, or set of persons, under lease to ten acres.

13. This rule does not apply to lands in towns or civil stations, nor to lands allotted for the cultivation of special products, nor to grants made under the special rules referred to in paragraph 10. Nor does it affect grants of land for religious edifices or public purposes. These latter are (save in some minor particulars) the same as those for Lower Burma and do not require separate notice. With these exceptions any lease to a non-Burman in Upper Burma in excess of 10 acres whether for agriculture or other purposes, requires the sanction of the Government of India.

14. It will be seen that the rules are intended to carry out a policy advocated by the Local Government, and endorsed by the Government of India, of (1) limiting the settlement of non-Burman agriculturists to special classes under special rules (which so far have not achieved their object) and excluding them from the ordinary raiyatwari settlement open to Burmans, and (2) preserving the raiyatwari system among Burmans, and excluding the middleman by limiting the area which may be granted to a Burman on lease, and reducing it still further in the case of a non-Burman. "In Burma it is possible to exclude the middleman whose existence has given rise to such great difficulties in other parts of India; and the Government of India are desirous of omitting no precaution that may conduce to this end". Holding this view, they were disposed to curtail the unlimited power which the Financial Commissioner now possesses to extend the area of leases to Burmans; but the Local Government held that he could be trusted to give effect to the policy of the Government.

Proceedings, December 1895, Nos. 17 to 19.

15. It may be noted that a majority of local officers to whom the question was referred, were in favour of applying the 25 acres limit to Burmans and foreigners alike. In Lower Burma, where there are no special rules for the settlement of non-Burmans, the limit for Burmans is 100 acres, and for others 50 acres; while as regards land for non-agricultural purposes, the rules are the same for both. Why, for the purpose of excluding the middleman, a distinction as to area should be necessary between the two classes in either Lower or Upper Burma is not


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APPENDIX D.

Continuance of lapsed revenue-free grants and assignments of Land Revenue.

Progs., June 1890, No. 93.

In *Madras* special rules were approved by the Government of India in 1890 for dealing with yeomiah pensions and other grants. Yeomiah pensions are of two kinds, *viz* :(*a*) for service, such as performing worship in a mosque, lighting tombs, etc., and (*b*) for the maintenance of the grantees and their families, either as an act of charity or reward for services rendered. The rules allow the Local Government, when special reasons exist, to continue for another life subsistence yeomiah pensions which have lapsed, and to use its discretion in gradually reducing and extinguishing pensions not expressly granted for a number of lives; also in recognizing the claims of adopted heirs to hereditary compensation allowances when they have no legal right to succeed.

A Progs., August 1880, Nos. 74—76.

2. *Bombay*—In 1880 the Government of India authorized the Bombay Government "to sanction charitable allowances not exceeding ₹50 per annum, in the aggregate, in any one case, to the destitute relatives of deceased revenue-free holders". All cases in which the aggregate annual grant proposed exceeded ₹50 were to be sent up for the sanction of the Government of India. These powers were at the same time extended to other major Local Governments including Central Provinces, Burma and Assam, but excluding the Punjab.

Financial Resolution, No. 1902, dated 26th July 1880.

3. *Punjab*—In the Punjab separate orders had been issued in 1872 permitting the Local Government to sanction money life pensions, within prescribed limits, for the widows or other near female relatives of certain classes of grantees whose privilege lapsed on death owing to failure of male heirs. These orders subsequently underwent modification more than once, and between 1887 and 1891, in consequence of what appeared to the Supreme Government to be a tendency to undue liberality in dealing with alienations of land and revenue, the practice and powers of the Local Government were brought under renewed examination and new rules were laid down for its guidance. These rules as they now stand are as follows:—

Government of India letter No. 24—405-2, dated 6th January 1897.

II. Subject to the following exceptions, no grant of which the conditions have been defined by any general or special order of the Government of India, or by an order of the Local Government acting under general powers conferred by the Government of India, may be

continued on lapse at the end of the term specified in the order, or otherwise modified in favour of the grantee, without the previous sanction of the Government of India.

Exception (*i*).—Grants for village service or for a religious, charitable or other analogous institution which, under orders passed prior to these rules by the Government of India, or by the Local Government in accordance with general powers conferred by the Government of India, are resumable on the expiry of a life or for some other period specified in the order, may on lapse be continued by the Local Government, without reference to the Government of India, for such period as the service is rendered, or the institution kept up and the assignee well behaved.

Exception (*ii*).—Other grants which, under orders passed prior to the issue of these rules by the Government of India, or by the Local Government in accordance with general powers conferred by the Government of India, are resumable on the expiry of a life or lives, or for some other period specified in the order, may be renewed by the Local Government, without reference to the Government of India, for a single life, provided that the previous sanction of the Government of India will be necessary in any case referred to in this exception when the amount to be continued—

(*a*) exceeds one-half of the sum enjoyed by the last grantee and is more than ₹50 per annum; or

(*b*) does not exceed one-half of the sum enjoyed by the last grantee and is more than ₹1,000 per annum.

III. If before the expiry of the term for which an assignment not exceeding ₹20 in annual value has been released, it is discovered that the sanction for release was given more than 10 years before by an officer not empowered to give such sanction, the Local Government may sanction release for the life of the existing holder or for the term of settlement.

Government of India letter No. 2939-120, dated 10th October 1894.

IV. In the case of grants for village service or for a religious, charitable or other analogous institution of an annual value not exceeding ₹20, which have been enjoyed for more than 10 years, the Local Government may, without reference to the Government of India, sanction renewal for a single life or for the term of settlement notwithstanding the fact that the original order for release, or an intermediate order for continuance was, or both such orders were, invalid.

Government of India letter No. 2939-120, dated 10th October 1894.

4. Cases falling under rules III and IV which are disposed of at a land revenue settlement are reported for confirmation to the Government of India in a tabular statement.

5. Renewals of lapsed grants under these rules are ordinarily only granted in the following cases:—

(1) the family of the deceased holder is in destitute or greatly reduced circumstances; or

(2) the members of the family are unable to support themselves ; or

(3) the deceased holder has rendered important public services of a special kind ; or

(4) there are sufficient political reasons for exceptional liberality, grounded upon the history of the family and its services to the State or its position in the country, or its claims by reason of misfortunes beyond the control of the survivors upon the compassion of the British Government.

6. Under the orders of 1872 above referred to, as modified in 1878 and 1883, the Local Government may also grant money pensions, within the following limits, to the heirs and relatives of deceased grantees whose grants have lapsed to Government :—

I. On the lapse, by failure of male heirs, of any jagir, muafi, horseman's share or other revenue free grant in perpetuity, the Local Government will be prepared to receive applications for the grant of life pensions to the widows and daughters and other destitute relatives of the deceased who were dependent on him for support, amounting in the aggregate to not more than one-half the value of the lapsed grant, where such value exceeds ₹100 per annum ; and where the value of the lapsed grant does not exceed ₹100 per annum to not more than ₹60 or the actual value of the lapsed grant if below this amount.

II. On the lapse of a life assignment the Local Government may grant pensions, not exceeding ₹60 per annum in the aggregate in any one case, to the destitute relatives of the deceased holder.

7. The powers of the Financial Commissioner, Punjab, with regard to the continuance and resumption of grants are as follows :—

I. At a general re-assessment of a district the Financial Commissioner shall have power to continue for the term of the new settlement all grants of the annual value of ₹50 and under for the maintenance of religious and charitable institutions or of rest-houses made for the term of the expiring settlement, or for the life or lives of the manager or managers of the institution.

Government of India Resolution No. 2360, dated 31st July 1883.

II. Any grant of the annual value of ₹50 and under originally released for the life or lives of the manager or managers of any such institution may, at a general re-assessment of a district, be converted by order of the Financial Commissioner into an assignment for the term of the new

settlement, conditional on the proper maintenance of the institution, even though one or more of the grantees is still alive ; provided that a grant of which the conditions have been altered under this rule, shall in no case be resumed until it is liable to resumption under the conditions on which it was originally made.

III. Any grant of the annual value of ₹50 and under made for the life or lives of the manager or managers of an institution may, if the original term of release expires during the currency of a land revenue settlement, be continued by order of the Financial Commissioner conditional on the proper maintenance of the institution for the remainder of the term of the settlement.

IV. The Financial Commissioner may, at a general re-assessment of a district, continue all grants in favour of village servants of the annual value of ₹20 and under for any period not exceeding the term of the new settlement.

V. The Financial Commissioner shall have power to resume any grant of the annual value of ₹50 and under at any time when he is of opinion that the conditions under which the grant was made are not substantially fulfilled.

8. *Baluchistan.*—In connection with the Peshin settlement the Chief Commissioner was authorised in 1896, to sanction assignments of revenue in perpetuity where the area concerned did not exceed ten acres, or for two lives or less in the case of larger areas. But this referred to claims coming under enquiry during the first settlement of the district. His powers as to alienations of revenue are now regulated by the Punjab rules which were extended to Baluchistan in 1902. The Financial Commissioner's powers under those rules are however exercised by the Chief Commissioner and not by the Revenue Commissioner.

Foreign Department, Progs., December 1896, Nos. 34—39.

Progs., June 1902, Nos. 42—47.

9. *United Provinces.*—The authority given to the Punjab Government to renew lapsed assignments of land revenue was extended to the Government of the United Provinces in 1905, and in 1906 rules were framed for the latter Province to regulate the continuance of revenue-free grants. These rules are similar to the Punjab rules quoted in paragraph 7, but the conditions of renewal are modified as follows :—

Progs., August 1906, Nos. 10—12.

(1) If any portion of the grant is renewed in favour of a single person, it shall be continued to him for the period of his life or any shorter period.

(2) If any portion of the grant is renewed and distributed among several persons, the share of each person may

be continued to him for his life or any shorter period.

(3) The portion of the grant renewed in favour of one person, or the aggregate of the portions renewed in favour of two or more persons, shall not exceed—

(*a*) R50 if the portion or aggregate of the portions of the grant renewed exceed half the sum enjoyed by the late holder, or

(*b*) R1,000 if the portion or aggregat of the portions renewed does not exceed half the sum enjoyed by the late holder.

Progs., April 1907, No. 8.

10. *Ajmere.*—The rules of the United Provinces have recently been extended to this Province with slight modifications.

Progs., October 1905, Nos. 53—61.

11. *All Provinces.*—In 1905, the following general orders were issued conferring on all Local Governments the powers to continue lapsed grants already conceded to the Governments of the Punjab and United Provinces :—

Resolution. Instances have recently come before the Government of India which show that the strict application of the existing rules regarding the resumption of assignments of land revenue is apt to cause hardship, especially when the family which has hitherto been dependent on such an assignment comprises widows and orphans whose income is suddenly reduced by its complete resumption. It frequently happens that such cases cannot be adequately met by the grant of charitable allowances, authority to sanction which was delegated in the Government of India Resolution (Finance and Commerce) No. 1902, dated 26th July 1880.* The Government of India are accordingly pleased to delegate to all Local Governments and Administrations, in cases in which an assignment of land revenue which is resumable on the expiry of a life or lives, or of any other period specified in the order making the grant, falls in, the power to renew it for a single life, the sanction of the Government of India being required only when the amount of the grant to be continued—

* *Vide* paragraph 2 *ante.*

(*a*) exceeds one-half of the sum enjoyed by the last grantee and is more than R50 per annum ; or

(*b*) does not exceed one-half of the sum enjoyed by the last grantee, but is more than R1,000 per annum.

2. This order is not intended to limit any powers in connection with land revenue assignments at present vested in any Local Government or Administration.

G. I. C. P. O.—No. 21 4 R. & A.—4-2-1908.—100—J. E. J.


सत्यमेव जयते