

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	658	Press
	5-6	~~Mis.~~
Dated	19-5-	1958

Not to be folded or roughly handled

Fort St. George, Judicial Consultation. 25th May 1858.

No. 5. Read the following letter from the Acting Register to the Court of Sudr Adawlut.
(Here enter 31st March 1858.)*

No. 6. ORDER THEREON, No. 656; dated 19th May 1858.

In the above letter the Court of Sudr Adawlut submit their views on the subject of the registration of bonds and other documents referred to them with a Memorandum of the late Acting Secretary to Government Mr. Henry Forbes by Extract Minutes of Consultation 18th July last.

Para. 1 to 9. 2. The Court admit to the full extent the abuses incident to the present Judicial system as connected with the fabrication of false evidence parole and documentary.

Para. 11. 3. They consider the existing law of registration to be practically inoperative. They attach much value to a new law which would make the registration of certain classes of documents compulsory by denying admission in evidence to all belonging to such classes which were unregistered.

Para. 10. 4. They would however confine this law to deeds of sale or gift of immoveable property; mortgages and acquittances thereof; leases for a term exceeding a year in limit; and wills. They see no reason to extend it to leases at will, and temporary transfers of land for terms not exceeding a year, and authorities to adopt; all of which are embraced by the present law; because they consider that evidence of such leases may be sufficiently secured by the issue of properly drawn up receipts for revenue payments, and that written authorization to adopt is of too rare occurrence to need to be legislated for. They would not enforce registration of claims upon moveable property, as these, they think, can be adequately protected by stamp laws.

Para. 16. 5. The Judges would not make the law of registration compulsorily retrospective, but would allow parties to avail themselves of the advantages of the Act in behalf of any documents already executed, provided that they appeared for the purpose within six months of the passing of the Act. As respects all documents the registration of which is not to be made compulsory the Sudr would allow them to be registered at the option of the holder under the same rules as apply to the registrations which are to be made compulsory. They would declare no discharge, partial or full, nor any modification or alteration of a registered document valid unless in like manner registered.

Para. 11. 6. The general arrangements under which the registration should be carried out are described by the Judges in paras. 20-26. Further no documents are to be admitted to registry, unless presented, in the case of the deeds of sale, gift, mortgage and discharge thereof, and lease above spoken of, within a limited period of their date of execution, say thirty days; and, in the case of wills, within a like period from the date of the demise of the testator, or discovery of the will.

7. In paras. 28, 29, 30, the Judges advert to the protection that the use of stamps may be made to afford the documents which will not be required to be registered, and state the measures which they would propose to take for that end.

8. In para. 31 they observe that if it has been found necessary in England to protect all important interests in property, by requiring that the same should be assured upon written instruments, pursuant to the Statute known as the "Statute of Frauds;" much more, is a similar protective measure needed in this country. They would therefore propose that it should be enacted that no title to immoveable property, no mortgage, lease for a term exceeding a year, nor claim upon moveable property of the value of ten Rupees and upwards, other than what may arise upon a running account; and no discharge of any such title, obligation, or claim; should be held valid, unless assured by a written instrument. Practically, few transactions which in their nature should have been expressed in writing, are credited upon mere oral evidence; but it would be well, the Judges think, that the protection should be legalized.

9. The Right Honorable the Governor in Council concurs generally with the Judges of the Court of Sudr Adawlut in their views as above recited. It is remarked that they mention no fee for registration nor—rule 26—for searching the register. The present rate of fees is too high. The fee should be moderate but still sufficient to cover all the expenses of keeping up the offices. Copies of registered documents should be given at the actual cost of copying.

Fort St. George, Judicial Consultation. 25th May 1858.

10. In place of rule 29 which prescribes that no stamps should be accepted the endorsement on which might show that it was bought for another purpose than that for which it had been used, the Government would prefer having stamps prepared specially for bonds and receipts, (that is, a separate stamp for bonds and separate stamp for receipts) by having the word bond or receipt with the year on which the stamp was issued from the stamp office, borne upon it. Of course papers so stamped could be used for nothing else, and there would be no necessity for any endorsement or for refunding the value of unused stamp paper as provided for in Section 30.

11. Besides the public Officers mentioned in para. 20 as Deputy Registrars, viz., District Moonsiffs and Thasildars, the Government would add the Head Moonshee in the Talook Cutcherry, as that functionary it is believed is usually stationary at the Cusbah of the Talook, whereas the Thasildar is frequently absent from it on duty, and occasionally for considerable periods. Even these Officers it is feared would hardly be sufficient as the law is to be made compulsory. The Sudr Court in communication with the Board of Revenue will consider what further facilities should be afforded.

12. It now remains that the Court of Sudr Adawlut should in communication with the Government Pleader prepare the Draft of an Act for carrying out, with the modifications above noted, the registration of bonds, deeds &c. to the extent recommended by them and for the extension and improvement of the present stamp law, and on this being done, the Bill will be forwarded to the Member for Madras of the Legislative Council in view to its being laid before that body. The Court will consider the rates of charge that should be made for registration, or searching the register, as well as the scale of stamps for bonds and receipts. Meanwhile copy of the letter from the Sudr and of these orders will be communicated to Mr. H. Forbes for his information.

13. It is remarked that the Draft of a Bill for the registration of assurances was referred by the Government of India for the opinion of this Government in the year 1852 but that the Draft was objected to by the *Court of Sudr Adawlut* and the *Revenue Board* with whom this Government agreed. It was not proceeded with by the Government of India.

14. The concluding paras. 32—41 of the report from the Sudr Adawlut refer to the preparation of puttahs for landed property, and of the receipts for the payment of land revenue, the amendment of the law respecting perjury, the embodying in each Zillah authoritative information of the local tenures and usages therein obtaining connected with landed possessions and Meerassy rights, the reduction of the period for the limitation of actions as regards moveable property, and simplification of the Civil procedure before District Moonsiffs. These questions as the Court admit go beyond the scope of the call made upon them in Extract Minutes Consultation dated 18th July 1857 and the Government are not at present prepared to enter upon them although fully alive to their importance.

(Signed) T. PYCROFT,
Chief Secretary.

✓
1
By dem Mr. Forbes,
I return the
four copies, duly corrected,
and add one corrected copy
in exchange for the fifth which
I sent before, and which I
shall feel obliged by you re-
turning.

James Telf
C. S. Chamier.

9th April 1858.

10. In place of rulement on which might have been used, the Government (that is, a separate stamp receipt with the year on course papers so stamped endorsement or for refund

11. Besides the public Moonsiffs and Thasildars Cutcherry, as that function whereas the Thasildar is for periods. Even these Office compulsory. The Sudr C further facilities should be

12. It now remains to Government Pleader prepared, the registration of extension and improvement forwarded to the Member for that body. The Court will or searching the register, as the letter from the Sudr and formation.

13. It is remarked that the Government of India for Draft was objected to by the Government agreed. It was

14. The concluding preparation of puttahs for land amendment of the law respecting the local tenures and Meerassy rights, the reduction of property, and simplification of the Court admit go beyond the scope of the call made upon them in Extract Minutes dated 18th July 1857 and the Government are not at present prepared to enter upon although fully alive to their importance.

(Signed) T. PYCROFT,
Chief Secy

3rd April 1880.

4/1

My dear Mr. Forbes,

There is a part
of the Printed Report which
I sent you today, that I
should like to direct Mr.
Strange's attention to; and I
shall therefore feel obliged
if you will kindly not put it
into circulation until Thursday
next, by which time I hope
to communicate with you
again on the subject.

Yours truly
C. S. Chénier.

Judicial Department.

No. —

From The Acting Register to the Court
of Sudder Udaulat.
Dated 31st March 1858.

For Order S.

the Civil procedure before District Moonsiffs.
the scope of the call made upon them in Extract
and the Government are not at present prepared to
importance.

(Signed) T. PYC

The undersigned
appears to me to be good.

no fee for registration is mentioned, or
for searching the registry as provided for
by rule 26 - The present rate of fees is too
high - The fee should be moderate, but
still enough to cover all expenses of
keeping up the office &c -

Should alter rule 29 - and instead of it
should have been prepared for Bonds
& for Receipts - by having the word Bond
or Receipt stamped on the paper of
both paper to receive for Bonds & Receipts
for nothing else - & this measure would
abolish the necessity of rule 30 -

Rule 20 - Besides D. Choudhiff & Thasildar
should make the Deed Choudhiff in the
Thasildar's office

a Deputy Registrar should do this as the
Thasildar is always moving about & diffi-
cult to find where as the Deed Choudhiff
is not -

From Para 31 - matters not connected
with the registration question are moved
from Para 11 to Para 30 - all is changed
that really applies to this question & I
would in reporting on the subject to
Genl. & an enactment only need
up a copy of the Paras that refer to the
registration of deeds -

22nd

P. C. L.

7
Judicial Department.

No 156.

Extract from the Minutes of Consultation

Dated 19th May 1858.

Read the following letter
from the Acting Registrar
Suds. Adamlut:-

(Here entered 31st March 1858.)

At
176
well

In the above letter
the Court of Suds Adamlut
submit their views on the
subject of the registration
of bonds and other docu-
ments referred to them
with a Memorandum
of the late Acting Secretary
to Government Mr. Henry
Forbes by Extract Minutes
of Consultation 18th July
last. -

Para. 1 to 9.

2. - The Court admit
to

to the full extent the abuses
incident to the present
judicial system, as connect-
ed with the fabrication
of false evidence parole
and documentary.

P. 11.
3 They consider the
existing law of registration
to be practically in operation.
They attach much value to
a new law which would
make the registration of
certain classes of documents
compulsory by denying ad-
mission in evidence to all
belonging to such classes
which were unregistered.

P. 10.
4 They would how-
ever confine this law to
deeds of sale or gift of
immovable property;
mortgages and acquittances
thereof, leases for a term
exceeding a year in limit,
and wills. They see no
reason

reason to extend it to leases
at will, and temporary trans-
fers of land for terms not
exceeding a year, and autho-
rities to adopt, all of which
are embraced by the pre-
sent law, because they
consider that evidence of
such leases may be suf-
ficiently secured by the
issue of properly drawn
up receipts for revenue
payments, (~~take here~~
~~after noticed~~); and that
written authorization to
adopt is of too rare oc-
currence to need to be
legislated for. They would
not enforce registration
of claims upon movable
property, as these, they
think, can be adequately
protected by stamp laws.

P. 16.
5 The Judges would
not make the law of re-
gistration compulsory
retrospective

retrospective - but would
allow parties to avail them-
selves of the advantages
of the Act in behalf of
any documents already
executed provided that
they appeared for the
purpose within six
months of the passing
of the Act - As respects
all documents the re-
gistration of which is
not to be made compul-
sory the Sudder would
allow them to be regis-
tered at the option of
the holder under the
same rules as apply to
the registrations which
are to be made com-
pulsory - They would
declare no discharge,
partial or full, nor
any modification or alter-
ation of a registered
document

P 11.

9
document valid unless in
like manner registered. -

6. The general arrange-
ments under which the
registration should be
carried out are described
by the Judges in paras.
20-26 - Further no do-
cuments are to be ad-
mitted to registry, un-
less presented, in the
case of the deeds of sale,
gift, mortgage and dis-
charge thereof, and lease
above spoken of, within
a limited period of
their date of execution,
say thirty days; and, in
the case of wills, within
in a like period from
the date of the demise
of the testator, or dis-
covery of the will. -

In paras 28-29-30
the Judges advert to
the

the protection that the
use of stamps may
be made to afford the
documents which will
not ^{be} required to be regis-
tered, and state the
measures which they
would propose to take
for that end.

8 In para. 31 they
observe that if it has
been found necessary
in England to protect
all important interests
in property, by requiring
that the same should
be assured upon written
instruments, pursuant
to the statute known
as the "Statute of Frauds";
much more, ~~the judges~~
~~consider~~, is a similar
protective measure
needed in this country.
They would therefore
propose

propose that it should
be enacted that no title
to immovable property,
no mortgage, ~~lease~~ ^{lease} for
a term exceeding a year,
nor claim upon movable
property of the value
of ten pounds and up-
wards, other than what
may arise upon a run-
ning account; and no
discharge of any such
title, obligation, or claim,
should be held valid,
unless assured by a
written instrument.
Practically, few trans-
actions which in their
nature should have
been expressed in writing,
are credited upon mere
oral evidence; but it
would be well, the
Judges think, that the
protection should be
legalized. —

The

9 The Right Honorable
the Governor in Council
concurs generally with the
Judges of the Court of
Sudr. Adawlut in their
views as above recited.
It is remarked that
they mention no fee
for registration nor -
rule 26. for searching
the register. The pre-
sent rate of fees is too
high. The fee should
be moderate but still
sufficient to cover all
the expenses of keep-
ing up the Office -
Copies of registered
documents should be
given at the actual
cost of copying. -

10 In place of
rule 29 which prescribes
that no stamps should
be accepted the
endorsement

+ (that is a separate stamp
for bonds & separation
stamp for receipts)

for any other document

endorsement on which
might show that it was
bought for another pur-
pose than that for which
it had been used, the
Government would pre-
fer having stamps pre-
pared specially for
bonds and receipts, by
having the word bond
or receipt with the
year on which the stamp
was issued from the
stamp Office, borne
upon it. Of course
papers so stamped
could be used for no-
thing else - and there
would be ^{no} necessity for
refunding the value
of unused stamp paper
as provided for in
Section 30. -

11 Besides the pub-
lic Officers mentioned
in para 20 as Deputy
Registrars

Registrars viz. District
Moonsiff and Tha-
sildars the Government
would add the Head
Moonshee in the Taluk
Cutcherry - as that func-
tionary it is believed
is usually stationary
at the Cutcherry of the
Taluk whereas the
Thasildar is frequently
absent from it on duty
and occasionally for
considerable periods.

12 It ^{now} remains that the Court
of Sudder Adawlut
should in communi-
cation with the Govern-
ment Pleader prepare
the draft of an Act for
carrying out with the
modifications above
noted, the registration
of bonds, deeds &c to
the extent recommended

by

from these officers it is feared
would hardly be sufficient
as the Law is too much
compulsory - The Sudder
Court is now in a situation
with the Board of Revenue
with considerable
further facilities
is afforded -

by them and for the con-
-tention and improve-
-ment of the present
stamp law - and on
this being done, the
bill will be forwarded
to the Member for
Madras of the Legisla-
-tive Council in view
to its being laid before
that body - The Court
will consider the rates
of charge that should
be made for registration
or searching the regi-
-ster - as well as the ~~rate~~^{scale}
of stamps for bonds and
receipts - Meanwhile
copy of the letter from
the Sudder and of these
orders will be commu-
-nicated to Mr. W.
Forbes for his informa-
-tion.

13 It is remarked
that the draft of a
bill for the registration
of

of assurances was referred
by the Government of
India for the opinion
of this Government in the
year 1852 but that the
draft was ^{objected to} ~~condemned~~
by the Revenue Board
the Court of Sadr Adawlat
but with whom this
Government agreed - for
prolix / cumbered with
technical phraseology
and as being from the
complicated nature of
the machinery set
on motion under it
altogether unsuited to the
condition of the popula-
tion under this Presi-
dency - It was not pro-
ceeded with by the Go-
vernments of India.

14. The concluding
paras. 32-41 of the
report from the Sadr
Adawlat refer to the
preparation

preparation of statutes
for landed property - and
of the receipts for the
payment of land revenue -
the amendment of the
law respecting perjury -
the embodying in each
Zillah authoritative
information of the local
tenures and usages
therein obtaining con-
nected with landed
possessions and various
rights - the reduction of
period for the limitation
of actions as regards
movable property -
and simplification of
the civil procedure be-
fore District Moonsiffs.
These questions as the
Court admit go beyond
the scope of the call
made upon them ⁱⁿ Be. 11.
dated 18th July 1854 and the Go-
vernments are not at
present

present prepared to enter
on them although fully
aware of their importance

Court of Sessions Adjourned. Dispt. 27th JH

Notes Exp. for Madras, of the

Legislative Council
of India
with a Report

Dispt. 27th

Board of Revenue
with 2 copies of Report

Dispt. 27th

Govt Pleader. with a Report.

Dispt. 27th

J. A. Bell

2nd July 1857 4452502
Federal Letter to Congress
7th Sept 1857 1857
Para. 23

25th Aug.
1857 department

1856

Subtract. Mans. of 1856

19 May 1858

1856-1857 Am. 2500 for 1857
1857-1858 Am. 1600 for 1858
1858-1859 Am. 2000 for 1859
1859-1860 Am. 2000 for 1860