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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 645 Press ~~Mis.~~

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Dated 25.5.1860 ~~19~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, for the month of May 1860.

No. 26. Read the following letter from C. F. CHAMIER, Esq., Registrar of the Sadr Court, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 7th May 1860, No. 42.

I have the honor by direction of the Judges to submit for the consideration of the Government, and for communication, if they think fit, to the Member for Madras in the Legislative Council of India, copies of the Minutes recorded by each of the Judges on the Bill to provide for the Registration of Assurances, now pending before the Council.

MINUTE by T. L. STRANGE, Esq., Puisne Judge, dated 9th April 1860.

My sentiments in favor of such a measure as the above have already been fully expressed in our communication to the Government of the 31st March 1858. In reply to that communication, we were called upon to prepare the draft of an Act for Registrations, which we accordingly did under date the 1st November 1858. The present Bill has in its main provisions followed our draft. I have therefore but little occasion for offering observation on this Bill, beyond generally approving thereof. It will afford to property that protection it most urgently requires, and it will in a very material degree lessen litigation. It will secure assurance of title, as the title springs into being, in lieu of leaving the ascertainment of the title to the uncertain issue of a Law-suit. It will put down a vast amount of forgery and concommitant perjury. The value of property will be increased, and a great source of corruption of morals removed; and the tribunals, freed of much embarrassing adjudication, will have all the better leisure for that which remains. It is impossible, therefore, to over-estimate the value of this measure. I trust the Bill may be passed without invasion of the principles upon which it is based.

I have a few remarks to make on the details of the Bill.

I have never seen the need of a General Office of Registry. It is in each circle, or district, that the uses of the Registration will appear. A repetition of the Registry at the General Office, of course increases the security of the Registry, but I do not think the check a necessary one. The certified original instrument in the hands of the party, and the copy entered in a trust-worthy Office in the district, appear to me to give the necessary protection to the integrity of the Registry. To multiply Offices is to multiply expense.

I observe by the provisions of the Bill, that in transactions connected with land there will be no less than four records of the event. First, there will be the original certified instrument; then the copy entered in the Deputy Registrar's Office; then that in the District Registrar's Office; and then that in the General Registry Office. I am, as above shown, against having more than one registered transcript. I would maintain the Deputy Registrar's, merely for receiving and passing on the instruments to the District Registrar. They must be a low class of functionary from the numbers required, and I would throw upon them as little responsibility as possible. To make their Offices complete Offices of Registry, will swell expenditure, and I think needlessly.

It appears to me preferrable to abstain in a legislative enactment from indicating the class of Officers to be used as Registrars and Deputy Registrars. All such subsidiary arrangements might with propriety be left to the ruling power.

However desirable it is to fix transactions in money, and to shut out the recourse to forging bonds now so common, I think it inexpedient to make the registry of such transactions peremptory. The requisition is likely to prove embarrassing, and to be viewed as oppressive. I would prefer leaving the registration of such documents to the option of the parties.

I have also to remark, that the whole measure in question is incomplete, unless accompanied by a Statute of Frauds, indicating those transactions which are of necessity to be fixed in writing.

(Signed) T. L. STRANGE,
Puisne Judge.

MINUTE by G. S. HOOPER, Esq., Puisne Judge.

I concur in the above remarks.

(Signed) G. S. HOOPER,
Puisne Judge.

MINUTE by G. T. BEAUCHAMP, Esq., Officiating Puisne Judge, dated 20th April 1860.

I believe that this Bill, if carried, will put an end to a great mass of litigation. It is my conviction that a large share of that which now exists has its origin not on any immediate contest between the parties, but in a desire to obtain the only security beyond the honesty of his debtor, and his bare deed, that our present system puts within a creditor's reach, viz., a Decree of Court.

I concur generally in Mr. Strange's remarks. It will be well, however, to have some central controlling authority; and it might be well to make provision for the Registry in the Central Office of any Deed that the holder might desire specially to be registered there.

It is very important that parties should have easy access to the Registers, and I would have all Deeds entered in the Deputy's Office, on this account, and also in view of the hesitation that parties may be expected to have in surrendering their Deeds for transmission to the District Office, and of the necessity for their having to attend more than once at the Deputy's Office.

I quite agree in thinking it expedient to have the selection of Officers for the Registry of Deeds to the Government, and I do not see the necessity of legislating about fire-proof chests, &c.

But I am also opposed to the Zillah Judge being made District Registrar. He cannot possibly find time for properly superintending an Office so important as that of the District Registrar, without neglecting his other duties, and we shall have a great show with a very small measure of security, for the duty must be committed to some subordinate who is not even recognized in the Bill.

If the Judge however must be the District Registrar, he should be vested with the power of appointing an Assistant or Assistants, and provision should be made in the Act for the punishment of fraudulent practices and culpable negligence, &c., by them.

I think that it is worth consideration, in the event of its being determined that assurances for chattels shall be compulsory, whether the time the deeds have to run, rather than their amount, should be the criterion for determining if they shall be registered or not, and I would fix the time at a year. This test would pass over all the petty contracts between growers and buyers of produce, manufacturers, &c., which have ordinarily but 6 or 8 months to run, and an insignificant portion of which finds its way into the Courts; whilst it would reach all Notes-of-hand and other money transactions which constitute the chief part of the litigation now existing.

It seems to me also worthy of consideration whether some distinction should not be made between Registered and other Deeds, in the limitation Law, should registry be made optional, say by reducing the term for bringing a suit on an Unregistered Deed to one year.

(Signed) G. T. BEAUCHAMP,
Officiating Puisne Judge.

MINUTE by T. L. STRANGE, Esq., Puisne Judge, dated 23rd April 1860.

I am in favor of a Central Controlling Office, but do not see the need that this should be itself an Office of Registry.

Mr. Beauchamp's suggestions as to the principle upon which instruments connected with money dealings should be registered appear to me important, and I entirely subscribe to them. Such a requisition as that the debt must be registered if the term exceeds a year, places a constraint upon no transaction where the parties have faith in each other, and do not wish the matter to become public. Loans for commercial emergencies, for example, would thus escape exposure. If longer terms are required between the parties, they can effect this by renewal. All current

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dealings of an ephemeral nature will also pass uninterfered with by the Law. Fixing the limitation law at the term to be used for the registration law, will make the arrangement uniform and complete.

(Signed) T. L. STRANGE,
Puisne Judge.

MINUTE by H. FRERE, Esq., Puisne Judge, dated 5th May 1860.

I concur in the remarks of Mr. Strange on the subject of the proposed General Register Office. The machinery provided by the Bill is in this respect, of a heterogeneous character; for the Deputy and District Registrars upon whom by far the largest share of duty will devolve, are to be ordinarily at least judicial officers, while a fiscal authority, the Board of Revenue at the Presidency, is constituted a General Register Office for the purpose of Superintending and controlling the whole. I think that in practice this would be found extremely inconvenient, and that if the General Register Office cannot be altogether dispensed with, it should be attached to the Office of the Court of Sadr Adálat; and that, in addition to the duty of general control over the subordinate officers, its functions should be confined to the Registry, under Section XXVII of the Bill of Deeds affecting land or other real property, in which the interest conveyed by the Deed may exceed in value a certain sum, which might be fixed at Rupees 1,000. As the Section in question stands, it would entail upon the District Registrars the duty of transmitting to the General Register Office, and upon the latter Office of registering, every petty mortgage of garden or other land in such Districts as Coimbatore or Malabar; and adverting to the fact that the great majority of landed estates in the latter District especially, many of them consisting of a few square yards only, are held upon tenures of this description, it will at once be seen, that the rule would involve much unnecessary labour of detail, both in the District and Central Offices.

The provisions of Section XVIII which allow parties at their own option to register a Deed in the District Office by means of any Vakeel of the Civil Court, appear to me to be excellent. In such cases the Vakeel will of course be himself held responsible for the identity of the parties, and the Office will thus be saved the labour of the enquiry which in the case of Registry in a Deputy Registrar's Office, will sometimes be necessary under Section XXI. At the same time I would modify this Section XVIII so far as to allow the parties themselves to register Deeds above a certain value such as Rupees 1,000 in the District Office, if desirous of doing so.

I would only add that the expression used in Section IX, that "no transfer of property * * * shall be valid, unless, &c.," appears to me too general. I would substitute the phrase that no such transfer shall have any legal force or validity; or that "no action shall be brought upon it, unless, &c.," as in the English Statute of Frauds. I would also modify Section XIV so far as it imposes the necessity of attendance before the Deputy Registrar, of all the parties to a Deed. Under the present law, Clause 2nd, Section IX, Regulation XVII of 1802 of the Madras Code, only the parties granting or executing the Deed, are required to attend in person, and I am not aware that this rule has led to abuse. I conclude that under Section XVIII the appearance of a Vakeel for the grantors only, will be sufficient.

(Signed) H. FRERE,
Puisne Judge.

(True Copies.)

(Signed) C. F. CHAMIER,
Registrar.

No. 27. To the Member for Madras of the Legislative Council of India, dated Fort Saint George, 25th May 1860, No. 645.

I am directed to forward to you copies of the Minutes recorded by each of the Judges of the Sadr Adálat on the Bill to provide for the Registration of Assurances, now before the Legislative Council.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

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No. 645.

The Member for Madras
of the Legislative Council
of India.

Sir-

I am directed to forward to you copies of the Minutes recorded by each of the Judges of the Sadar Adalat on the Bill to provide for the Registration of Assurances now before the Legislative Council.

I have the honor to be
Sir
Your most obedient
humble Servant
J. F.

Fort St George
25th May 1860.