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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1094 Press Mis

SD-51

Dated 5 8 19 1865

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Not to be folded or roughly handled

Read again Proceedings, dated 25th February and 25th April 1865, Nos. 323 and 623.

No. 50. Read also the following letter from Major R. M. MACDONALD, Registrar General of Assurances, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 19th June 1865, No. 193.

I have the honor, with reference to the Government Order, No. 623, of the 25th April, to submit a correspondence with the Government Law Officers, from which it will be observed that the Advocate General is still of opinion that the old Registers cannot be transferred to the District Registrars, and that the table of fees sanctioned under Act XVI of 1864 cannot be applied to these books.

2. I beg also to submit a Circular of the Registrar General of the North-West Provinces, from which it would appear that the new table of fees has been applied there to searches of, and extracts from, the old Registers, and that the latter are under the custody of the District Registrars. I believe, however, that the office of District Registrar devolves in the North-West Provinces on the Civil Judges, and, if so, it is probable that no change has been made in the custody of the old Registers, while, with regard to fees, it is possible that the old law there may admit of a change which cannot be introduced here.

From Major R. M. MACDONALD, Registrar General of Assurances, Madras, to J. R. BOYSON, Esq., Government Solicitor, Madras; dated 28th April 1865, No. 169.

I have the honor to request that you will be good enough to lay the accompanying Government Order, No. 623, of the 25th instant, and the following remarks, before the Advocate General for his opinion.

2. It will be observed that there are two questions to be decided :—

1*st*.—Whether the old Registers can be made over to the District Registrars.

2*ndly*.—Whether the fees for searches and copies should in that case be regulated by the old law, or the new table of fees.

3. Under Section 2 of Regulation XVII of 1802, the Registers of the Zillah Courts were appointed Registers of Deeds, and they were permitted in Section 15, in case of absence from their stations, sickness, or any other disqualification from personal attendance to the duties of their office, to appoint (with the approbation of the Judge, to whom they might be Registers respectively) a Deputy, being a Covenanted Servant of the Company, and duly qualified to act for them. By Regulation XI of 1831, the Zillah Judge was authorized, in the absence of the Register, or when the office of Register became vacant, to appoint some duly qualified Covenanted Servant of the Company to act as Deputy Register of Deeds, and in the event of there being no Covenanted Servant at the station, he was directed to perform the duties of Register himself. This Regulation also made provision for the registry of deeds at the stations of the auxiliary courts and those of the Native Judges, by requiring the Assistant and Native Judges to perform the duties of Register of Deeds.

4. The office of Register to the Zillah Court having been abolished, the office of Register of Deeds under these Regulations became eventually vested in three classes of officers—

I. Zillah Judges,
II. Subordinate Judges,
III. Principal Sudder Ameens;

and as it was not competent to Government to appoint other Registers then, it appears to me that it is not competent to them to appoint other Registrars now with regard to these instruments.

5. Most of the District Registrars in this Presidency are Deputy Collectors in charge of Treasuries, and could not, therefore, have been appointed to act temporarily as Registers under the old Regulations by the Zillah Judges, because they were not Covenanted servants.

6. It seems to me, therefore, that the old registers should remain in the custody of the officers to whom they are already entrusted, and this I understand to be Mr. Norton's opinion, as this is the course which he recommended, although he saw the inconvenience with which it must be attended.

7. With regard to the second question it may be observed that the fee for a search is the same under Section 45 of Regulation XVII of 1802, and under our present table of fees, viz., 8 Annas. But with regard to copies there is this difference that a uniform charge of one Rupee is prescribed in Regulation XVII of 1802, whereas under the table of fees it would be levied at the rate of 4 Annas for every 100 words. It appears to me that our table of fees cannot be made applicable to copies of deeds registered under the old Regulations.

(True Copy).

(Signed) R. M. MACDONALD,
Registrar General.

From J. R. BOYSON, Esq., Government Solicitor, Madras, to Major R. M. MACDONALD Registrar General of Assurances, Madras; dated Madras, 15th June 1865, No. 347.

Referring to your letter of the 28th April last, No. 169, and to the conference which you had yesterday with the Advocate General and myself, in connection with the keeping and control of Registers of Deeds registered before Act XVI of 1864 came into operation, I have now the honor to send you a copy of the Opinion which the Advocate General has written on the subject, and return the enclosure contained in your letter, No. 169, above noted.

(True Copy).

(Signed) R. M. MACDONALD,
Registrar General.

COPY—OPINION.

I see no reason to alter the Opinion which I wrote on the 18th February last.

2. The custody and payment for search, copies, &c., of Instuments registered prior to Act XVI of 1864 are not provided for by that Act. Nor are the old regulations repealed, so far as such custody, &c., is concerned.

3. As the law stands at present, old registered Instruments can only be dealt with under the old Regulations and Acts. They cannot be dealt with partly under the old and partly under the new law; their custody being under the one—payment for searches and copies, &c. under the other.

4. I do not know how the Law is in the North-West Provinces, or whether the Registrar General's Circular No. 15 is legal, with reference to the Law in those Provinces, but I am quite clear as to what is the Law in the Presidency of Madras on the point, and have already expressed that opinion.

(Signed) J. B. NORTON,
Advocate General.

15th June 1865.

(True Copy).

(Signed) J. R. BOYSON,
Government Solicitor.

(True Copy).

(Signed) R. M. MACDONALD,
Registrar General.

From W. JOHNSTON, Esq., Registrar General, North-West Provinces, to the District Registrar of——; dated Allahabad, 26th April 1865, Circular No. 15.

I have the honor to inform you that the Rules and the Schedule of fees relating to searches of Registers, and the granting of copies of entries therein, framed under Act XVI of 1864, are to be applied to searches in, and the grant of copies from, the old Registers compiled before the present Act came into force.

(True Copy).

(Signed) R. M. MACDONALD,
Registrar General.

Proceedings of the Madras Government, Judicial Department,
5th August 1865.

No. 51. ORDER THEREON, 5th August 1865, No. 1094.

Under date the 25th February last, Order No. 323, the several Civil Judges and Principal Sudder Ameens, who have the custody of registers made under the law in force previous to the enactment of Act XVI of 1864, were furnished with copies of the Opinion of the Advocate General on a question submitted in a letter from the Registrar General of Assurances, as to the officers who are legally competent, in the present state of the law, to give certificates and copies of Deeds registered in the old registers.

2. In the opinion of the Advocate General, the effect of Section 1 Act XVI of 1864 is to leave the old law just as it stood before the Act came into operation, with respect to Instruments already registered under the former and preceding Acts and Regulations. There could be no fresh registration under any Regulation or Act prior to Act XVI of 1864; but as to the custody, &c., of the old registrations, the old law remained in *statu quo*. The more convenient plan of placing the old records under the custody of the new Registrars, could not be effected except by fresh legislation.

3. A communication was addressed to a Member of the Council of the Governor General, in view to the insertion of the desired provisions in a Bill then about to be introduced to amend Act XVI of 1864, but it did not reach Calcutta until after the Bill had passed the Council. Pending any further revision of the Act, the Government of India suggested a course, which as appears from the opinion of the Advocate General recorded above, cannot be adopted as long as the old Registration law of this Presidency shall not be fully repealed.

4. Under these circumstances, the Governor in Council resolves to pass orders to the effect suggested in paragraph 5 of the Opinion, dated 18th February last. Ex-officio Registrars of Deeds under the old law, and the officers who may succeed them in the respective offices, are accordingly directed to retain charge of the old registers, to permit searches, to give copies and certificates, and to charge fees, just as though Act XVI of 1864 had not been passed.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Registrar General of Assurances.
„ Civil Judge of
„ Principal Sudder Ameen of

Exd. J. H. Burns.

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No. 193.

Registrar General's Office
Madras
19th June 1865

From

Major R. M. Macdonald
Registrar General of Assurances
Madras

To.

The Honble A. J. Arbuthnot
Chief Secretary to Government
Fort Saint George

Sir

I have the honor with reference to the Government Order No. 623 of the 25th April to submit a correspondence with the Government Law Officers, from which it will be observed that the Advocate General is still of opinion that the old Registers cannot be transferred to the District Registrars, and that the table of fees sanctioned under Act XVI of 1864 cannot be applied to these books.

Not printed in Madras Govt

2. I beg also to submit a Circular of the Registrar General of the North West Provinces from which it would appear that the new Table of fees has been applied there to searches of and extracts from the old Registers and that the latter are under the custody of the District Registrars.

I believe however that the office of District Registrar devolves in the North West Provinces on the Civil Judges and if so it is probable that no change has been made in the custody of the old Registers while with regard to fees it is possible that the old law there may admit of a change which cannot be introduced here.

I have the honor to be

Sir

Your most obedient servant

R. M. Macdonell

Registrar General

Registrar General's Office
Madras
28th April 1865

No 169

From

The Registrar General of Assurances
Madras

To

J. B. Boyse Esquire
Government Solicitor
Madras

Sir

I have the honor to request that you will be good enough to lay the accompanying Government order No 623 of the 25th instant and the following remarks before the Advocate General for his opinion.

2. It will be observed that there are two questions to be decided.

1st Whether the old Registers can be made over to the District Registrars.

2nd Whether the fees for searches and copies should in that case be regulated by the old law or the new table of fees.

3. Under Section 2 of Regulation XVII of 1802 the Registers of the Zillah Courts were appointed Registers of Deeds and they were permitted in Section 15 in case of absence from their stations, sickness or any other disqualification from

personal attendance to the duties of their offices to appoint (with the approbation of the Judge to whom they might be registers respectively) a deputy, being a Covenanted Servant of the Company and duly qualified to act for them. By Regulation XI of 1831 the Zillah Judge was authorized in the absence of the register or when the office of register became vacant to appoint some duly qualified Covenanted Servant of the Company to act as Deputy Register of Deeds and in the event of there being no Covenanted Servant at the station, he was directed to perform the duties of register himself. This Regulation also made provision for the registry of deeds at the stations of the auxiliary Courts and those of the Native Judges by requiring the Assistants and Native Judges to perform the duties Register of deeds.

4. The office of Register to the Zillah Court having been abolished, the office of Register of deeds under these regulations became eventually vested in three classes of officers.

I. Zillah Judges.
II. Subordinate Judges.
III. Principal Sudder Ameens

and as it was not competent to Government

Ins. Instructions [illegible] 45
Registers [illegible]
with their [illegible]
[illegible]

That seems to be the only practicable course, seeing that it is our practice to be bound by the opinion of the Govt Law officers. I am however still satisfied that there is no legal ground for dealing with the deeds in question by Books as with articles of property belonging to Govt and being a sale - a new sale - say the sale - of the old Regr. or that the old Regr. or that laid down in Act 14/64 for searches & examinations & must of this difficulty & must all, be have been avoided WR

Judicial Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read again Pros: 25th Feb. '65 No. 323
" 25th April —— " 623.

Read also letter from the Registrar General of Assurances —— Entd 19th June '65 No. 193.

Order — 5th August 1865 — No. 1094.

Under date the 25th Feb. last, Order No. 323, the several Civil Judges & Principal Sudder Ameens, who have the custody of registers made under the law in force previous to the enactment of Act XVI - 64, were furnished with copies of the Opinion of the Advocate General on a question submitted in a letter from the Registrar General of Assurances, as to the officers who

who are legally competent in the present state of the law, to give certificates & copies of Deeds registered in the old registers.

2. In the opinion of the Advocate General, the effect of §I - Act XVI - '64 is to leave the old law just as it stood before the Act came into operation, with respect to Instruments already registered under the former & preceding Acts & Regulations. There could be no fresh registration under any Regulation or Act prior to Act XVI - '64; but as to the custody, &c., of the

the old registrations, the old law remained in <u>statu quo</u>. The more convenient plan of placing the old records under the custody of the new Registrars, could not be effected except by fresh legislation.

3. A communication was addressed to a Member of the Council of the Governor General in view to the insertion of the desired provisions in a bill then about to be introduced to amend Act XVI - '64 but it ~~reached~~ did not reach Calcutta until after the bill had passed the Council. Pending any further revision of the Act, the Govt. of India suggested a course

course, which as appears from the opinion of the Advocate General recorded above, cannot be adopted as long as the old Registration law of this Presidency shall not be fully repealed.

4. Under these circumstances the Governor in Council resolves to pass orders to the effect suggested in para 5 of the Opinion dated 18th Feb. last. Ex-officio Registrars of Deeds under the old law & the officers who may succeed them in the respective offices

offices are accordingly directed to ~~retain the~~ ~~con~~continue ~~to act~~ ~~under the old law~~, to ~~the~~ upon them the charge of the old registers, to permit searches, to give copies & certificates, & to charge fees, just as tho' Act XVI - '64 had not been passed.

The Registrar General of Assurances.
" Civil Judges of the several Distts. desp. 9/5/65
" Principal Sudder Ameen of all Distts.

Pro: of Aug.

Judicial 1865. Department.

No. 1094.

PROCEEDINGS of GOVERNMENT.

Feb. 20/66.

Dated 5 August 1865.

Confirmation of the
sentence of the
General Court Martial held
at Ahmednuggur

Read 20 Feb. 1866

12/2/66

50.57.

C2 Aug.
Rep.