

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1549	Press
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Dated	26-9-	1867

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
26th September 1867.*

No. 263. Read the following letter from the Secretary to the Government of India, to the Secretary to Government, Fort Saint George; dated Simla, 5th September 1867, No. ⁶⁰/₄₁₉₇.

Home Department.

I am directed to forward the accompanying copy of a letter from the Government of the North-Western Provinces, No. 315A, dated the 14th ultimo, and to request that you will be so good as to favor the Government of India, at the earliest practicable date, with an expression of the opinion of His Excellency the Governor in Council as to what documents *prima facie* within the Registration Act, should be exempted as being already sufficiently registered in the course of Settlement operations.

From the Secretary to the Government of the North-Western Provinces, to the Secretary to the Government of India in the Home Department, Simla; dated Nynee Tal, 14th August 1867, No. 315A.

It has been brought to the notice of this Government that there are reasonable grounds for holding that, under the provisions of Act XX of 1866 (the Registration Act), it is necessary that the *Wajib-ool-urz*, and all other documents connected with the Record prepared at the revision of Revenue Settlements in these Provinces, be registered, in order to have any legal force.

2. The Government of India are aware that Settlement operations are in progress at present in many Districts in the North-Western Provinces; if, therefore, the requirements of the Registration Act have been correctly stated, it will be necessary that in every village in these Districts, such documents and maps shall be registered, and the registration attested by all the numerous parties whose interests are concerned.

3. It is scarcely necessary to point out the great hardship and expense which would be entailed upon the Zemindars and all others having any recorded rights in the land, if they were compelled thus to conform to the strict provisions of the Registration Act, and on the other hand the main objects for which the Act was framed are attained in other ways so far as the Settlement Records are concerned. These Records are carefully compiled by special officers appointed for the purpose, their correctness and authenticity are tested, and they are indexed and deposited in the District Record-rooms where they are open to inspection by the public on application.

4. It appears, therefore, to the Lieutenant Governor that, both on the ground that the strict enforcement of the Registration Act in this respect would cause great hardship to numerous individuals and prove very oppressive, and also because the chief objects of the Act are attained in another way, it is very advisable that Settlement Records generally should be exempted from the provisions of the Act, and I am desired to forward the enclosed Draft Bill, together with a Statement of Objects and Reasons, and to request that His Excellency the Governor General in Council will be pleased to take the subject into early consideration, with a view to the enactment of the desired modification of the present law as soon as possible.

Proposed Bill for the exemption from registration, under Act XX of 1866, of certain documents connected with rights of property and occupancy of land in the North-Western Provinces.

Whereas under Section 17 of Act XX of 1866, entitled the Indian Registration Act, all instruments (other than an instrument of gift) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred Rupees and upwards, to, or in, immoveable property, are required to be registered; and whereas it is further enacted that no instrument required to be registered shall be received in evidence in any Civil proceeding in any Court, or shall be acted upon by any public servant as defined in the Penal Code, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of the said Indian Registration Act:

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And whereas Section 9, Clause I of Regulation VII of 1822, enacts that it shall be the duty of officers employed in making or revising Settlements to record the fullest possible information in regard to landed tenures, the rights, interests, and privileges of the various classes of the agricultural community * * * and that all decisions on the demands of the Zamindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the Settlement and recorded in the Collector's proceedings, &c.

It is hereby enacted that all documents prepared by any officer engaged in making or revising a Settlement of the Land Revenue, and recorded with the Settlement proceedings, shall be exempted from the operation of the Indian Registration Act.

All documents which, under any existing law, are required to be filled annually by Putwaries are exempted from the operation of the Indian Registration Act.

This Bill shall be taken and read as part of Act XX of 1866, and shall have retrospective effect as though the following exception had been originally inserted after Clause 2, Section XVII of the said Act :—

“Excepting all documents recorded by a Settlement Officer in the exercise of his duties in making or revising Settlements of the Land Revenue, and all papers which are required by law to be filled annually by Putwaries, as well as all judicial proceedings which by law the Settlement Officer is empowered to hold, and to deposit in the Record Office of the Collector of the District.”

STATEMENT OF OBJECTS AND REASONS.

The object of the Act for Registration of Assurances is to preserve documentary instruments of evidence from the risk of loss or destruction, and from fraudulent tampering, and also to secure a knowledge of their contents to all who are concerned. With certain limitations registration is compulsory, and the penalty is that an unregistered deed is not admissible as evidence in a Court of Justice.

The terms in which this Act is drawn are so large and comprehensive that there may be reasonable grounds of forensic argument, possibly of judicial decision, that all documents connected with the Record, prepared on the occasion of the revision of the Settlement of the Revenue in the North-Western Provinces, ought to be registered, or to incur the penalty of non-registration.

These documents count by hundreds : the executors of these documents count by thousands : to subject these documents to registration would not only be practically impossible, but unnecessary.

The Collector of Revenue presides over an office constituted by law. He is *ex-officio* Registrar of landed property, and has under him a large establishment of officials called Canongoes, one of whose main duties is to keep accurate registers of the beneficiary occupants of land, or its usufruct of every kind.

By the early Regulations of 1793, 1795, and 1803, in Bengal, Behar, and the Ceded and Conquered Provinces, the Courts of Law are bound to furnish the Collector with all decisions affecting rights of land. This is now obsolete, and opportunity might be taken to repeal the Sections of the law. And not only is it obsolete, but under the altered view of the duties of the Collector such decisions are to the Collector of no value, as his system of Registration is based on the fact of possession, and not of the right, unexecuted, and possibly unexecutable.

The documents of the Settlement are prepared by specially selected officers, are engrossed in judicial form, signed and sealed, and are by law admissible as irrebuttable evidence in the Courts: they are drawn up by migratory officers, who, for the sake of verification and attestation, proceed from village to village, and they are attested by all concerned : they are carefully preserved in a Record-room against the risk of loss, destruction, or fraud, and are open to inspection, of all concerned, on payment of a fee.

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It thus appears that all the objects contemplated by the Act for Registration of Assurances have been attained : to subject these documents to a second registration would be expensive and oppressive, and by the necessity of the case inoperative : to exclude such documents as evidence would be a cruel hardship.

No. 269. ORDER THEREON, 26th September 1867, No. 1549.

Ordered that a copy of the foregoing letter, and of its enclosure, be furnished to the Board of Revenue for an expression of their views as to what documents registered in the course of the Revenue Settlement should be exempted from the provisions of the Registration Act XX of 1866.

(True Extract).

Chief Secretary.

To the Board of Revenue.

„ Revenue Department.

„ Registrar General of Assurances.

Ed. J. Talloch.

No. ⁶⁰
2197

FROM

E. C. BAYLEY, Esq.,

Secretary to the Government of India,

TO

The Secy to the Govt of Madras.

Home Dept.

SINLA, the 5th September 1867.

SIR,

I AM directed to forward the accompanying copy of a letter from the Government of the North-Western Provinces, No. 315, dated the 14th ultimo, and to request that you will be so good as to favor the Government of India, at the earliest practicable date, with an expression of *the opinion of this Govt of India* as to what documents *prima facie* within the Registration Act, should be exempted as being already sufficiently registered in the course of Settlement operations.

I have the honor to be,

SIR,

Your most obedient Servant,

E. C. Bayley

Secretary to the Government of India.

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