

## MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

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*Proceedings of the Madras Government, Judicial Department,  
15th May 1867.*

Read the following papers :—

No. 163. From J. ROHDE, Esq., to the Chief Secretary to Government, Fort Saint George ; dated Ootacamund, 1st January 1867.

I have the honor to beg the attention of the Right Honorable the Governor in Council to the great inconvenience experienced by the enforcement of a rule published in the *Gazette* of the 24th February under your signature, and made, I presume, by the Registrar General of Assurances under the provision of Section 80 of Act XX of 1866.

2. The rule to which I refer is that by which deeds for registration have to include, as descriptive of the *territorial* limits in which the property is situate, the name of the *Registration District* and *Registration Sub-District* in which it is situate.

3. I can hardly suppose that the Registrar General in proposing this rule did so with the knowledge that he thus introduced a clause which the Select Committee of the Legislative Council had intentionally struck out of the proposed Bill ; but if reference is made to the draft of the Bill, as published in the *Fort Saint George Gazette* of the 23rd February, it will be found that the provision, that the deed to be registered (Section 20) should be described as *in the District and Sub-District in which it is situate*, was proposed, while a reference to Act XX shows that this provision was thought objectionable, and that the statement of the *territorial Division in which the property is situate* is sufficient.

4. By Section 80, it is true it is for the Registrar General to define what *territorial Divisions* shall be recognized.

5. I would submit that in the rule laid down by this Officer he has not complied with the provisions of the Act, as laid down by the Imperial Legislature ; on the contrary, he has substituted a nomenclature confined to his own recently constituted Department, for that which the public recognize. The definition he proposes is simply the territory of his own several officers, the limits of which are unknown to the public, and are liable to frequent change.

6. I need hardly say that if ten different heads of different Departments are each to insist on the recognition, by the public, of the divisional limits arbitrarily assumed and frequently changed for the convenience of each, the confusion will be endless.

7. It is clear to me that the object in allowing the Registrars General to declare " what territorial limits should be recognized " was that in the different Presidencies, Districts are differently designated ; even in this Presidency the terms varying in every Division, the well known and commonly used designations were doubtless intended to be used, and it could never have been supposed that (as in the case I complain of) " a deed which described a property as in the Ouchterlony Valley, in the Numbledod Umsham of the Wynaad Taluq of Malabar, and within the Sub-Registration District of Goodalore, should be rejected because I had omitted to note that it was within the *territory of the District Registrar of Calicut*."

8. I cannot refrain from bringing to the notice of His Excellency Lord Napier in Council that an Act, with which it is desirable that every person in the country, who has any property whatever, should be familiar, and which is certainly as complete in itself as was required, is over-ridden in this Presidency by twice the amount of matter in rules, the greater part of which are for the use of the Administrative and Executive Officers of the Department, but some of which are for the guidance of

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the public, and all jumbled together, so that, after mastering 102 Sections of the Act, and 160 Supplementary Rulings of this Government, have to be read in order to the safe use of the provisions of the Act.

9. I have already shewn that the rule, the application of which I particularly complain of, was laid down in direct opposition to the declared will of the Legislature.

10. I have now repeatedly endeavoured to get a deed registered by the Registrar General, and as repeatedly have I failed from some technical objection, based not on the provisions of the Act itself, but on these rules of which I knew nothing, except that I had seen a paper containing rules which I presumed were for the guidance of the Department only. Once have I had to purchase fresh stamps and rescribe the whole papers, and now again, from the Registrar General's captious objection, I am delayed not only till I can remedy the defect, but till I can, by a concurrence of other events, procure the registration of the deed.

Referred to the Registrar General of Assurances for his report.

FORT SAINT GEORGE,  
2nd March 1867.

(Signed) A. J. ARBUTHNOT,  
Chief Secretary.

No. 164. From Major R. M. MACDONALD, Registrar General of Assurances, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 27th March 1867, No. 41.

I have the honor to submit the following remarks on the accompanying letter of the 1st January from Mr. Rohde, which was referred to me for report on the 2nd instant, but which has only recently reached me, owing to my absence from the Presidency on a tour through the Ganjam and Vizagapatam Districts.

2. The rules referred to were published in the *Gazette* of the 24th April, and not of the 24th February 1866, as stated in paragraph 1.

3. Mr. Rohde in paragraph 3 supposes that I framed the new rules without having properly studied the original and amended Bills. As the Government have before them my letters, No. 3 of the 10th January 1866, No. 21 of the 24th January, No. 47 of the 19th February, and No. 54 of the 22nd February, in which a number of questions connected with the old Act and the new Bill were discussed in considerable detail, it seems almost unnecessary for me to observe that I was fully aware that the words District and Sub-District were used in Section 20 of the Bill introduced on the 26th January, and that the term territorial Division was substituted for these words in the corresponding Section 21 of the amended Bill and Act; and it may be remembered that before this provision became law, I recommended in a letter, No. 38 of the 9th February 1866, that special measures should be taken to make the public acquainted with its existence. As the report of the Select Committee has never been published, and has not, to the best of my knowledge, been communicated to any one in this Presidency, I am at a loss to conceive what authority Mr. Rohde has for asserting that the first provision was thought objectionable in the sense which he means, viz., that it required too much, and that the reason the legislature left it to the Registrar General to declare what territorial Divisions should be recognized for the purposes of Section 21 was, that Districts are

differently designated in different Presidencies. My own impression on the subject was that the framer of the Bill considered it at first sufficient that the Registration District and Sub-District should be named in every instrument, and accordingly inserted a provision to that effect; that probably some doubt arose afterwards as to whether such a description would be sufficient in all cases, and that a phrase was accordingly substituted for it, not less but far more comprehensive, with a view, if necessary, to the locality of the property being described with greater precision. That this hypothesis, whether correct or incorrect, is not a singular one may, I think, be inferred from the corresponding rules published in Bengal and Bombay under Section 21, in both of which the insertion of the Registration District and Sub-District is made a *sine qua non* in every case, and in both of which something more than the Registration District and Sub-District is insisted on.

*Bengal Rule.*

"12. The description specified in Section 21 may be dispensed with, if the identification is complete without it, as when an estate is described as "No. 221 on the Collector's Rent Roll," or "a three Annas share in No. 221." But the following territorial Divisions shall always be specified:—District (*i. e.*, Collectorate) Pergunnah, (or Thanna, where Pergunnahs do not exist) Mouzah, and also the Registration District and Sub-District."

*Bombay Rule.*

"Amended Rule 6.—The territorial Divisions recognized under Section 21 shall be the following:—In the Mofussil, the Registration District and Sub-District, the Talooka, and Village or Township wherein the immoveable property affected by the instrument is situated."

"Within the ordinary original Civil Jurisdiction of the High Court of Judicature of Bombay, the Registration Sub-District in which the immoveable property affected by the instrument is situated."

The rule does not seem to me an unreasonable one. The limits of Collectorates and Taluqs, as well of Registration Districts and Sub-Districts, are liable to changes. Immense changes have, for instance, been made within the last few years in the limits of the Collectorates of Bellary, Cuddapah, and Kurnool; the Collectorate of Guntoor has disappeared altogether; the Godavery and Kistna Collectorates have neither the same names nor the same limits as they had formerly; the Collectorates of Madras and Chingleput have merged into one; a large portion of Canara has been transferred to a different Presidency. The changes in the Taluqs have been still more sweeping. In six cases the Collectorates are not conterminous with the Registration Districts, the Collectorates of Madras, Tanjore, and Malabar, each constituting two Registration Districts. In some cases the names of Sub-Districts, situated in different Districts, are identical or nearly identical. Thus there are the Sub-Districts of Trivadi and Manargudi in the District of South Arcot, and there are two Sub-Districts bearing precisely the same names in the District of Tanjore. There is a Sub-District of Trivallore (திருவள்ளூர்) in the District of Chingleput, and a Sub-District of Trivalore (திருவாரூர்) in the District of Tranquebar. There is a Sub-District of Allur (அலூர்) in the Nellore District, and a Sub-District of Alur (அலூர்) in the Bellary District.

4. In paragraph 5, Mr. Rohde states that the limits of the Registration Districts and Sub-Districts are unknown to the public. It may be observed with reference to this point that the Government are bound by law to notify in the Official Gazette the limits of every District and Sub-District, as well as every alteration made in such limits, and that the requisite Notifications have appeared in the *Gazette*.

5. Mr. Rohde in paragraph 8 expresses himself dissatisfied with the number of the rules, the matter contained in them, and the order in which they are placed. These are, of course, points in which it must be impossible to please every one. A glance at Section 80 of Act XX of 1866 will, however, show that the rules must necessarily contain some matter intended for the guidance of the public, as well as of the Registering Officers, and some matter intended for the guidance of the latter alone. Some portion of the latter might, no doubt, have been published in some other form than that of rules, but in a Department where the majority of the Officers have other duties which take up most of their time, where new men are constantly appointed without any previous knowledge of the work, and where the offices are liable to be inspected by Officers who are also in many cases entirely new to their duties, it seems desirable that the rules should be, as far as possible, complete in themselves. With regard to the arrangement of the rules, the principle upon which I have proceeded has been to place each rule under the Section to which it relates, and to quote the Section (or Sections) in the margin. It is, therefore, not necessary that any one should read through the whole of the rules.

6. The facts connected with the particular case referred to by Mr. Rohde are, to the best of my recollection, as follows.

7. On the 31st October 1866, Mr. Mackenzie tendered for registration a deed of mortgage executed by Mr. Rohde for his son. To this was attached, as if it formed a part of the same instrument, what was in fact a collateral deed executed by different parties on a different date, giving their consent to the mortgage of the property above referred to. I informed Mr. Mackenzie that these constituted two distinct instruments, and that I could not register the second one because it was executed on a slip of unstamped paper, and because he had no Power of Attorney from the executing parties, authorizing him either to present the instrument or to admit execution. The first failure complained of by Mr. Rohde was, therefore, not attributable, as he seems to assert, to a technical objection based on the rules, but to a violation of the Stamp Act, and the want of the necessary power under the Indian Registration Act. Some time afterwards Mr. Mackenzie re-appeared with a fresh instrument in which Mr. Rohde had embodied the substance of the two former deeds in one, and had sent down the necessary Power of Attorney. Unfortunately, however, he had introduced a map into the deed, and had sent down no copies of the map as required by Section 21 of Act XX of 1867. The words of the Section are—

“No document containing a map or plan of any property comprised therein shall be accepted for registration, unless it be accompanied by a true copy of the map or plan, or, in case such property shall be situate in several Sub-Districts, by such number of true copies of the map or plan as shall be equal to the number of such Sub-Districts, and in case the property shall be also situate in several Districts, by such further number of true copies of the map or plan as shall be equal to the

number of such Districts.” Under this Section, and Sections 78 and 73, three copies are required of every map contained in an instrument presented in the General Registry Office, which are entered, respectively, in the books of the Registrar General, Registrar and Sub-Registrar. In this case, again, the provisions of the Act itself had not been complied with, and this alone would have been sufficient to prevent the instrument being accepted. In point of fact, however, one of the rules had also been violated, as the name of the Registration District (Calicut) had been omitted. I submit that the epithet, “captious,” cannot be correctly applied to objections which an Officer is bound to make if he does his duty at all, and that it is hopeless to expect that deeds can be correctly drawn up by any person undertaking the task in the manner described by Mr. Rohde himself. I allude especially to that passage in the last paragraph, in which he expressly states that he knew nothing of the rules, and that, although he had seen them, he presumed they were for the guidance of the Department only.

8. I think Mr. Rohde must be still under some misapprehension regarding the amount of the inconvenience entailed on him by his non-observance of the Act and the rules. I foresaw from the first that the provisions of Section 21, and any rules which might be framed under it, would prove a stumbling-block to the public for some time to come, and with a view to prevent the necessity of fresh deeds being drawn up in cases in which the property had not been properly described, I framed the rule quoted below.

“59. If an instrument tendered for registration does not contain such a description of the property as is required by the above rules, the parties executing the same shall be allowed to append the necessary description in a Schedule.”

Provision is made for the registration of Schedules in Article III of the Table of Fees, and thousands of instruments have been registered with Schedules under the above rule. The cost of the stamp for a Schedule is 8 Annas, and as it is generally comprised in less than 100 words, the extra cost of registration is 4 Annas. Mr. Rohde can supply all that is required in a few minutes at a cost of 12 Annas.

9. It is no doubt desirable, as stated by Mr. Rohde, that all owners of real property in the country should be familiar with the provisions of the law on the subject of registration, and it is certain that great numbers of them are not so at present. As one means of practically carrying out this object, I have the honor to request permission to publish a Guide, containing such information as may seem necessary on the subject in English and the Vernacular languages.

No. 165. ORDER THEREON, 15th May 1867, No. 793.

The Governor in Council directs that the foregoing letter from the Registrar General of Assurances be communicated to Mr. Rohde, with reference to his letter dated the 1st January last. The Government concur in the remarks of the Registrar General.

2. Major Macdonald's proposal to publish a guide for the information of persons having occasion to resort to the Registry Office is approved. It should be made as brief as is consistent with perspicuity, embracing all the particulars which are essential to the correct preparation of the different description of instruments which are brought for registration.

Proceedings of the Madras Government, Judicial Department,  
15th May 1867.

3. Meanwhile, the Registrar General should instruct the Officers of his Department to afford persons bringing instruments for registration which do not fulfil the requirements of the law, all necessary information to enable them to supply omissions and accomplish the registration of their instruments with as little delay as possible.

(True Extract).

Chief Secretary.

To J. Rohde, Esq.  
To the Registrar General of Assurances.

Ed. J. Talloch.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers.

From J. Rohde Esq. Colacamand. 21st Jan'y 1867.

From the Registrar General of Assurances. 27th March 67 No. 1.

Order thereon 15th May 1867 No. 773.

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*[Signature]*

J. Rohde Esq }  
Reg. Genl. of Assurances }  
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dispd 17/5.

Registering Instructions  
- memo. to

1632165

Industrial 1862. Department.

No. 2193

PROCEEDINGS OF GOVERNMENT.

Of 2159.

Dated 15 May 1862.