

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

|          |        |                         |
|----------|--------|-------------------------|
| G.O. No. | 872    | Press<br><del>Mis</del> |
| Dated    | 28. 5. | <del>19</del> 1867      |

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department.*

*23th May 1867.*

No. 285. Read the following Proceedings of Government in the Revenue Department.

Read Proceedings of the Board of Revenue, dated 7th May 1867.

Read Proceedings of the Madras Government, Revenue Department, dated 3rd May 1867, No. 1010.

Read the following papers :—

Proceedings of the Board of Revenue, dated 17th April 1867.

Read Proceedings of the Madras Government, Revenue Department, dated 2nd April 1867, No. 762.

The Board observe that the attestation clause, at the end of the form of Title Deed, evidently contemplates that the date of execution, both by the Government and the grantee, should be the same, and should be entered at the commencement of the Deed. The Board would suggest that the Advocate General be requested to decide what date is to be entered as the date of the Indenture in the first line of the form of Deed, and whether registration must not be made with reference to this date.

Referred, as requested, for the opinion of the Advocate General, with copy of the form of Deed of Sale for waste lands.

(Signed) W. HUDLESTON,  
*Secretary to Government.*

*17th April 1867.*

From the Acting Government Solicitor, to the Secretary to Government, Revenue Department, Fort Saint George; dated Madras, 25th April 1867, No. 255.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosure, requesting the Advocate General's opinion as to the date to be inserted in a conveyance of

Dated 17th April 1867, and made on Proceedings of the Board of Revenue of same date.

land sold under the Waste Land Rules as the date of such conveyance, and as to the date from which the time for the registration thereof should be computed.

2. I have submitted them, together with a copy of the Proceedings of Government in its Revenue Department, No. 762, under date the 2nd instant, for the consideration of the Acting Advocate General.

3. And I now forward a copy of his Opinion, and return the order and enclosure above acknowledged.

**OPINION.**

If the Deed is in fact executed by Government and by the grantee on the same day, then that date would be the proper one to enter both in the top of the Deed and in the attestation clause; but where the parties reside at different places, the grantee perhaps being in England, this cannot be done. Only for the Registration Act no difficulty would arise. The date of the Deed is wholly immaterial, since it takes effect from delivery, and not from execution, and the insertion of a false or even an impossible date is harmless. Where different persons execute at different dates, the practice of conveyancers is to date the document on the day of the first execution, the party who executes first being in general the vendor. But the Registration Act (XX of 1866, Section 22) makes the date of execution be the period from which the time for registration counts; and where there are several persons executing at different times, a fresh period of registration starts from each

*Proceedings of the Madras Government, Judicial Department,  
28th May 1867.*

execution. I presume that the practice is not to seal the grant until the signature of the grantee has been affixed. Where this course is adopted, the date at the top should be the date of his signature; and then the attestation clause by him would agree. The date at which the seal of Government is affixed should also be mentioned, which will enable the grantee to have his full period of four months for re-registration. If, however, the seal of Government is affixed first, then the Indenture should be dated from that day; and the attestation clause by the grantee should be altered so as to accord with the true date of his signature.

2. In advising upon this question before, I said nothing as to the necessity for registration within four months of the first signature. It is quite clear that, if the grantee (for instance) execute first, the Government must register the document within four months, if they want to prevent him from backing out of his agreement. But supposing no registration took place upon his signature, and then the Government executed the document, and the grantee presented the Indenture for registration for the first time, within four months after the last execution, but more than four months after this first execution, a question would arise whether the document could then be accepted. It will be observed that the Act speaks of registration and re-registration, not of registration simply. It is not necessary to offer a positive opinion upon the point; but as a matter of precaution it would be well to register the first signature at once, if there is any chance that the four months may expire before the second signature is obtained.

(Signed) J. D. MAYNE,  
*Acting Advocate General.*

20th April 1867.

(True Copy).

(Signed) H. J. BROCKMAN,  
*Acting Government Solicitor.*

*Order, 3rd May 1867, No. 1010.*

Miscellaneous.

The Advocate General's opinion will be communicated to the Revenue Board, for the information of all Collectors.

2. To obviate risk and doubt in the matter, the Government would be prepared to direct that all such Deeds of Sale shall be registered by the Collectors on behalf of Government immediately after execution by the purchaser, were it not that they are so often incorrectly drawn up in the districts.

3. There seems, however, to be no reason whatever why four months should elapse between execution by the purchaser and by Government respectively, and the Board will instruct the Collectors to register the Deeds on behalf of Government immediately after they are received back with the Government seal, and before they are delivered to the purchaser.

(True Extract).

(Signed) W. HUDLESTON,  
*Secretary to Government.*

The Board resolve to inquire whether it is the intention of Government that the cost of registering all grants shall fall upon the State, for they apprehend that this will be the result of the instructions in paragraph 2 of the Order.

*Order, 20th May 1867, No. 1136.*

Miscellaneous.

The Government contemplated the liability to incur this charge when the Order in question was passed.

*Proceedings of the Madras Government, Judicial Department,  
28th May 1867.*

2. The Board's attention is drawn to the G. O., dated 11th April 1865, No. 567, Judicial Department, communicated to them with Proceedings in this Department, dated 26th idem, deciding that, as a rule, all Assurances to which Government is a party should be registered; and also to paragraph 2 of the Acting Advocate General's Opinion, dated 20th April 1867, in Government Proceedings, dated 3rd May 1867, No. 1010, Revenue Department, pointing out that registration of Deeds of Sale of waste land may be essential for the protection of the Government interests under the Deed.

3. There seems no reason why the Government should hesitate to incur a charge similar to that which every private person must incur in a like case.

(True Extract).

(Signed) W. HUDLESTON,  
*Secretary to Government.*

No. 286. ORDER THEREON, 28th May 1867, No. 872.

Ordered that the foregoing Proceedings be communicated to the—

Public Works Department.

Military „

Public „

Financial „

Political „

Educational „

Ecclesiastical „

Marine „

(True Extract).

*Chief Secretary.*

To

Exd. J. H. Burns.

*Proceedings of the Madras Government, Revenue Department,  
3rd May 1867.*

No. 59. Read the following papers :—

Proceedings of the Board of Revenue, dated 17th April 1867.

Read Proceedings of the Madras Government, Revenue Department, dated 2nd April 1867, No. 762.

The Board observe that the attestation clause, at the end of the form of Title Deed, evidently contemplates that the date of execution both by the Government and the grantee should be the same, and should be entered at the commencement of the Deed. The Board would suggest that the Advocate General be requested to decide what date is to be entered as the date of the Indenture in the first line of the form of Deed, and whether registration must not be made with reference to *this* date.

Referred, as requested, for the opinion of the Advocate General, with copy of the form of Deed of sale for waste lands.

(Signed) W. HUDLESTON,  
*Secretary to Government.*

17th April 1867.

No. 60. From the Acting Government Solicitor, to the Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 25th April 1867, No. 255.

1. I have the honour to acknowledge the Order of Government noted in the margin with its enclosure, requesting the Advocate General's opinion as to the date to be inserted in a conveyance of land sold under the Waste Land Rules as the date of such conveyance, and as to the date from which the time for the registration thereof should be computed.

2. I have submitted them, together with a copy of the Proceedings of Government in its Revenue Department, No. 762, under date the 2nd instant, for the consideration of the Acting Advocate General.

3. And I now forward a copy of his opinion, and return the order and enclosure above acknowledged.

OPINION.

1. If the Deed is in fact executed by Government and by the grantee on the same day, then that date would be the proper one to enter both in the top of the Deed and in the attestation clause. But where the parties reside at different places, the grantee perhaps being in England, this cannot be done. Only for the Registration Act no difficulty would arise. The date of the Deed is wholly immaterial, since it takes effect from delivery, and not from execution, and the insertion of a false or even an impossible date is harmless. Where different persons execute at different dates, the practice of conveyancers is to date the document on the day of the first execution, the party who executes first being in general the vendor. But the Registration Act (XX. of 1866, Section 22), makes the date of execution be the period from which the time for registration counts; and where there are several persons executing at different times, a fresh period of registration starts from each execution. I presume that the practice is not to seal the grant until the signature of the grantee has been affixed. Where this course is adopted, the date at the top should be the date of his signature; and then the attestation clause by him would agree. The date at which the seal of

*Proceedings of the Madras Government, Revenue Department,  
3rd May 1867.*

Government is affixed should also be mentioned, which will enable the grantee to have his full period of four months for re-registration. If, however, the seal of Government is affixed first, then the Indenture should be dated from that day; and the attestation clause by the grantee should be altered so as to accord with the true date of his signature.

2. In advising upon this question before, I said nothing as to the necessity for registration within four months of the first signature. It is quite clear that, if the grantee (for instance) execute first, the Government must register the document within four months, if they want to prevent him from backing out of his agreement. But supposing no registration took place upon his signature, and then the Government executed the document, and the grantee presented the Indenture for registration for the first time, within four months after the last execution, but more than four months after this first execution, a question would arise whether the document could then be accepted. It will be observed that the Act speaks of registration and re-registration, not of registration simply. It is not necessary to offer a positive opinion upon the point; but as a matter of precaution it would be well to register the first signature at once, if there is any chance that the four months may expire before the second signature is obtained.

20th April 1867.

(Signed) J. D. MAYNE,  
*Acting Advocate General.*

(True Copy.)

(Signed) H. J. BROCKMAN,  
*Acting Government Solicitor.*

No. 61. ORDER THEREON, 3rd May 1867, No. 1,010.

Miscellaneous.

1. The Advocate General's opinion will be communicated to the Revenue Board, for the information of all Collectors.

2. To obviate risk and doubt in the matter, the Government would be prepared to direct that all such deeds of sale shall be registered by the Collectors on behalf of Government immediately after execution by the purchaser, were it not that they are so often incorrectly drawn up in the districts.

3. There seems, however, to be no reason whatever why four months should elapse between execution by the purchaser and by Government respectively, and the Board will instruct the Collectors to register the Deeds on behalf of Government immediately after they are received back with the Government seal and before they are delivered to the purchaser.

(True Extract.)

(Signed) W. HUDLESTON,  
*Secretary to Government.*

To the Board of Revenue.  
.. the Accountant General.  
.. the Registrar General of Assurances.  
.. the Government Solicitor.

Ed. S. T. Augustin.

*Proceedings of the Madras Government, Revenue Department,  
20th May 1867.*

No. 310. Read the following Proceedings of the Board of Revenue, dated 7th May 1867 :—

Proceedings of the Madras Government, Revenue Department, dated 3rd May 1867, No. 1,010.

The Board resolve to inquire whether it is the intention of Government that the cost of registering all grants shall fall upon the State, for they apprehend that this will be the result of the instructions in paragraph 2 of the Order.

No. 311. ORDER THEREON, 20th May 1867, No. 1,136.

Miscellaneous.

1. The Government contemplated the liability to incur this charge when the Order in question was passed.

2. The Board's attention is drawn to the G. O. dated 11th April 1865, No. 567, Judicial Department, communicated to them with Proceedings in this Department, dated 26th idem, deciding that as a rule all Assurances, to which Government is a party should be registered; and also to paragraph 2 of the Acting Advocate General's opinion, dated 20th April 1867, in Government Proceedings, dated 3rd May 1867, No. 1,010, Revenue Department, pointing out that registration of Deeds of Sale of waste land may be essential for the protection of the Government interests under the Deed.

3. There seems no reason why the Government should hesitate to incur a charge similar to that which every private person must incur in a like case.

(True Extract.)

*[Signature]*

*Secretary to Government.*

To the Board of Revenue.  
.. the Accountant General.  
.. the Registrar General of Assurances.  
.. the Government Solicitor.  
.. the Judicial Department.

Ed. S. T. Augustin.

Not all true.

7 Oct.

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28 May 1867 N<sup>o</sup> 872.  
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Public Works Department  
 Building - - - - -  
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 Ecclesiastical - - - - -  
 Marine - - - - -

*The Secretary*