GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

26th September 1881, No. 1997.

Registration.

Read the following papers:—

From H. E. STOKES, Esq., Collector of Salem, to the Chief Secretary to Government, dated Salem, 9th September 1881, *No.* 2337 [*Current No.* 2703].

I have the honor to request that Government will be good enough to decide, or to refer for opinion to their law officers, the question whether, when an officer of Government executes as such a document and sends it to be registered, he is bound to appear in person or by agent duly authorized.

2. The case with regard to which I make this application is as follows:—A portion of a mitta in Dharmapuri Taluk in the Sub-Division was sold for arrears of revenue and bought in on account of Government. A sale certificate in the name of Government was issued by the Sub-Collector, who sent it to the Tahsildar of Dharmapuri to get it registered. The Sub-Registrar, however, refused to receive it unless presented by the Sub-Collector in person or by an authorized agent. The Sub-Collector in vain contended that he is exempted under Section 88 from such appearance; and, as he appeared to me to be right in this view, I wrote to the Inspector-General of Registration requesting him to instruct the Sub-Registrar in the matter. Mr. Hamnett, however, in reply, holds that the Sub-Collector must authorize the Tahsildar of Dharmapuri by power of attorney, duly executed and authenticated, to present the certificate for registration. I am, therefore, obliged to address Government in the matter, but, to save time, I have instructed the Sub-Collector to comply. I enclose copy of Mr. Hamnett's letter.

3. Mr. Hamnett refers me to G.O., 15th May 1877, No. 1,209, as decisive of the question. On reading that Order I confess I do not understand what it decides. Mr. Hamnett seems to think it means that a public officer is at liberty—Rule 27 (now Rule 26) notwithstanding—to present a document in the capacity of executant; and further that when a public officer as executant presents a document, he must do so either in person or by duly-authorized agent. The Government Order says: "This does not debar the officer, but it relieves him of obligation." The word "debar" must refer to disability to present as executant, and so far Mr. Hamnett seems to be right as to the meaning; but the obligation from which the officer is stated to be relieved can only be the obligation to appear in person or by agent, and so far the Government Order goes against Mr. Hamnett's contention.

4. I think that, if language has any meaning, Rule 26 does prevent a Government officer presenting a document in the character of executant from getting it admitted to registration. If Government also think so, either the rule must be modified or some instructions must be issued as to what officers of Government are to be authorized to present on their behalf documents under which Government or the Secretary of State are the parties claiming.

5. If, however, the Government Order quoted is right and Rule 26 does not debar a Government officer executing a document from presenting it in that character for registration, then I submit that the requirements of Section 32 of the Act are overridden by Section 88. Nothing can be clearer than the latter section: "Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, &c., to appear at any Registration Office in any proceeding connected with the registration of any document, &c.; but the registering officer may, if he thinks fit, refer to the officer executing, &c." To require, as Mr. Hamnett does, the Sub-Collector to go before the Sub-Registrar of Hosúr, execute a power of attorney

and get it authenticated by the Sub-Registrar is to create the very inconvenience and hindrance to the work of the public offices which Section 88 was designed to obviate, without any advantage that I can see.

6. Even supposing the Sub-Collector to be entitled to represent Government as the parties claiming under the document, and to present it as such representative, the words of Section 88 appear to me sufficiently clear in exempting him from personal appearance, or from having to send an agent armed with a duly-authenticated power of attorney. The Tahsildar of Dharmapuri, however, is as much entitled, so far as express authorization goes, to represent Government in the matter.

7. I respectfully submit that Rule 26 should be modified so as to admit of documents in favor of Government or the Secretary of State being registered on presentation by officers executing them in their public capacities, and that the Registration officers should be instructed that in such cases Section 88 of the Act applies.

No. 1564.

Referred to the Advocate-General for opinion.

OOTACAMUND,
17*th September* 1881.

(Signed) R. DAVIDSON,
Chief Secretary.

From the Honorable P. O'SULLIVAN, Advocate-General, to the Chief Secretary to Government, dated Madras, 19*th September* 1881 [*Current No.* 2790], *forwarding the following Opinion :—*

OPINION.

So far as the facts appear from the correspondence sent to me, I think the Sub-Registrar of Dharmapuri ought to have registered the document upon presentation. It was presented by the Tahsildar for registration, having been executed by the Sub-Collector in favor of the Government. A document may be presented for registration either by the person executing the same or by the person claiming under it Section 32 of Act III of 1877. The inquiry by the Sub-Registrar relates to the execution, and, by Section 88 of the Act, the Sub-Registrar, if he entertained any doubt upon the question of execution, might have referred to the Sub-Collector for information. It does not appear whether the Sub-Collector wrote an official letter to the Sub-Registrar stating that the Sub-Collector had executed the document and sending it for registration. If this was done, the Sub-Registrar was not entitled to require the attendance of the Sub-Collector or a power of attorney executed by him.

Section 88 applies only where the person executing the document is an officer of Government and sends it for registration as the person executing the same, not where an officer of Government claims under the document, for in this case the officer must present the document either personally or by agent appointed by power of attorney in the manner provided by the Registration Act.

(Signed) P. O'SULLIVAN,
Advocate-General.

ORDER THEREON, 26th September 1881, No. 1997.

The Advocate-General's opinion will be communicated to the Collector of Salem.

(True Extract.)

Chief Secretary.

To the Collector of Salem.
„ the Inspector-General of Registration.
„ all Departments of the Secretariat.

Exd. A. Grubert.

P. W. C. No. 5800

Govt. of {1881} Madras.

JUDICIAL.

To

THE COLLECTOR OF SALEM,
&c., &c., &c.

Dated September, 26th.

Issued

Recd. 10 Oct. 81 *Encl.*

G.O., 26th *September* 1881, *No.* 1997.

S. J. C.

SEPTEMBER.

Registration.—Communicating opinion of the Advocate-General upon the question whether, when an officer of Government executes as such a document and sends it to be registered, he is bound to appear in person or by agent duly authorized.

No. 2502 W a/ 12th Octr/81
Recorded.
Recorded
Entd. in Receipt Regr.

SUPERINTENDING ENGINEER'S OFFICE, 3RD CIRCLE,

No. 714.C. Erichinopoly 28th Septr 1881.

From

Lt Col J. Beatty R.E.

Establishment

Superintending Engineer, 3rd Circle,

To

Col R. H. Lankey C.B. R.E.
Chief Engineer P.W.D.
Madras

Thro: the Examiner of P.W.A.

Sir,

With reference to G.O. No. 1691 W. of 8th July 181, sanctioning an additional temporary Clerk for the Erichinopoly Division, I have the honor to inform you that the Clerk will be required upto the end of the current year, on a Salary of Rs 30 per mensem.

6 Months from October 181 to March 182 @ 30 Rs ____ 180 - - -

Deduct payment for March to be made in April ____ 30 - - -

Now requiring sanction Rs 150 - - -

2. The Board of Revenue hav

have, I understand, forwarded to Government the proposal of the Prichinopoly Local Fund Board for a separate Establishment; but orders have not yet been passed on the Board's Proceedings and the President Local Fund Board will probably not be in a position to take over charge before 1st April.

I have the honorable
Sir
Your Most obdt Servt
R. Beatty Lt Col RE.
Supg Engineer 3d Circle

L.W.L

£13 3/10

Pd 3/10 Pd 4/10 Pd 7/10

B 8-781-1691 W

P. W. D. 3RD CIRCLE.

EXAMINER P. W. ACCOUNTS 5 OCT 81

From P. W. C. No. 5-795

The Superintending Engineer,

3rd Circle.

To

The Chief Engineer

P. W. D.

thro: the Examiner

No. 714 C.

Dated 28th } Septr 1881

Received 10 Oct

Enclosures. —a.

Endorsement No. 1060 S & 3rd

dated 8th October 1881

Forwarded to the Chief Engineer, Public Works Department, for disposal with reference to para 2 of G.O. No. 1691 W dated 8th July 1881.

2. The orders which may be passed regarding the Establishment referred to in para 2 of Superintending Engineer's letter should also be communicated to this office for information.

D. P. Cardoza

Examiner P. W. Accts

No. 2501 W a/12 = 11 October 1881

B.

No. 2501 W & A/12 = 11 October 81

B.

Entd. in Receipt Regr.

With reference to G.O. No. 1691 W of 8th July 1881, reporting that the additional Clerk in the Trichinopoly Division Office will be required up to 1st April 1882.

Withdrawn

The sum of Rs 150 is appropriated from the Grant for Temporary Establt, to meet the pay of the temporary clerk for the Trichinopoly Divn, mentioned in G.O. No. 1691 W & 8th July 1881. 1/81 J. Pennycuick

Cy

To The C.E. 3rd Circle

" Exr P.W.A. Under Secy to Govt P.W.D.

" Dy Ag 13/10

B.C. to Audr