

13/87

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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

P. W.

DEPARTMENT

G.O. No.
B.P. No.

2364 W

Press.
Mis.

Dated

22 - 8 - 1883

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Of. Secy

Not to be folded or roughly handled.

2364
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GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

READ—the following papers :—

From Colonel J. BEATTY, R.E., Superintending Engineer, Fourth Circle, to the Secretary to Government, Public Works Department, dated Ootacamund, 7th June 1883, No. 229 W.

With reference to G.O., No. 333 W., of 3rd February 1883, sanctioning the purchase of Messrs. Brown and Co.'s property at Vayitri for Rs. 4,500, I have the honor to report that the Telegraph Department being urgently in need of the building, the Executive Engineer paid the purchase-money in March, on the understanding that the owner would execute a proper deed of transfer as soon as it had been prepared by the Government Solicitor.

2. The owner states * that he is still quite prepared to give a fair title to the property, but the Government Solicitor does not see how to prepare a conveyance, and suggests that the correspondence should be forwarded to Government for orders.

* *Vide* his letter of 13th ultimo.

ENCLOSURES.

From E. BARCLAY, Esq., Government Solicitor, to the Executive Engineer, Nilgiri District, dated Madras, 22nd May 1883, No. 282.

With reference to your letter of 20th March last, No. 633, I forward herewith copy of a letter I addressed on the 17th ultimo (No. 221) to Mr. Brown regarding his title to the premises referred to in your letter and which form part of the Pookote Estate, and copy of Mr. Brown's reply, dated 13th instant.

2. From my letter to Mr. Brown you will see how very unsatisfactory his title to anything beyond an undivided one-fourth share in the property is. Mr. Brown, in his letter, says that the ground proposed to be sold is considerably less than the one-fourth he is entitled to, but that is not the point, what Mr. Brown is entitled to is not a particular one-fourth part of the estate, but an undivided one-fourth share in the whole estate, so that he cannot convey more than an undivided one-fourth share in any part of it.

3. Then, again, Mr. Brown says that his mortgage to Messrs. Oakes and Co. did not include the property in question, as it had been previously mortgaged by him to Dr. Henderson; but supposing that Mr. Brown was, as he alleges, entitled to a moiety of the estate, it must be an undivided moiety, for there is nothing to show that he had any particular divided share of the estate, and his mortgage to Messrs. Oakes and Co. would be of an undivided moiety in the whole estate, subject to Dr. Henderson's previous mortgage; in fact, Messrs. Oakes and Co. would have only a second mortgage.

4. Mr. Brown says it formed no part of his contract that he was to guarantee his title to the property, and that had he the slightest idea that I intended inspecting more than the original lease, he would have declined allowing me an inspection. Mr. Brown has, however, overlooked the provisions of Section 55 of the transfer of Property Act, which, however, is no new law. Some of these provisions are that the seller is bound (a) to disclose to the buyer any material defect in

the property of which the seller is, and the buyer is not, aware, and could not with ordinary care discover; and I need hardly say that insufficiency of title is a very material defect of which Mr. Brown as seller must be taken to be aware, and which Government could not, without an inspection of the title-deeds, be aware or discover; (b) to produce to the buyer, on his request for examination, all documents of title relating to the property which are in the seller's possession or power; (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto; (d) on payment or tender of the amount due in respect of the price to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place, and, most important of all, that the seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same. As a matter of law, it did form part of Mr. Brown's contract that he was to guarantee his title to the property. He contracted to sell to Government certain land in which he has, according to his own showing, but an undivided half share, and that subject to a mortgage, and in which, according to the title-deeds, he has only an undivided one-fourth share, so that really he is, as matters stand at present, unable to perform his contract, for he cannot execute a proper conveyance of the property he contracted to sell.

5. I do not see how I am to prepare a conveyance of the property from Mr. Brown to Government. I would suggest that the correspondence be forwarded to Government for orders.

From E. BARCLAY, Esq., Government Solicitor, to H. W. BROWN, Esq., Pookote, Wynaad, dated Madras, 17th April 1883, No. 221.

The title-deeds relating to your property, consisting of a house, godown and about 8 acres of land, forming part of the Pookote Estate, Wynaad, have been sent to me by Messrs. Oakes and Co. for inspection and examination on behalf of Government.

I have made a careful and complete examination of these deeds and find that the title is in a very unsatisfactory condition.

The earlier title is extremely incomplete, but it seems that in the year 1854 the estate was vested in the following persons in the shares specified below:—

- One-half in Mr. William Robson.
- One-fourth in Mr. William Elsam.
- One-fourth in Messrs. H. B. and E. Elsam.

The title to Mr. Robson's moiety seems to be tolerably clear, but there is no evidence to show how Messrs. H. B. and E. Elsam became entitled to their share beyond some pencil notes on a schedule of deeds which is with the papers.

In fact, the greater part of the evidence, if such it can be called, as to the devolution of title is derived from pencil notes on the above schedule.

By a deed, dated the 1st May 1863, Mr. William Elsam conveyed his one-fourth share to yourself, and this seems to be the only direct interest you have in the property, and even this share is encumbered by mortgage as hereafter appears.

Messrs. H. B. and E. Elsam appear to have become insolvent in or about 1854, and their share became vested in the Official Assignee at Bombay. I can find no trace among the title-deeds of this share ever having been conveyed to you. Perhaps you may be able to throw some light on the subject. If no assignment has been made to you, the interest still remains in the Official Assignee at Bombay, and he will have to be a party to any assignment to Government.

Another flaw in the title is the mortgage by you to Messrs. Oakes and Co., dated 30th September 1873, of your so-called moiety in the property, of which no reconveyance, as far as I can discover, has ever been made. If no reconveyance has been made, the representatives of the then partners of Oakes and Co. and Mr. Dawson will have to be reconveying parties to Government on an assignment being made.

Again, no representation appears ever to have been taken out to Mr. William Robson's estate in this country; the proper conveying party of Mr. William Robson's interest is his representative here, as his executrix in England has no power over property in India.

The title being in this extremely unsatisfactory condition, I cannot advise Government to accept it until, at all events, some satisfactory evidence is produced of the assignment to you from the Official Assignee at Bombay and of a reconveyance to you from Messrs. Oakes and Co., or of the readiness of the representatives of the former partners, Messrs. W. T. S. and James Oakes, and of Mr. Dawson to become parties to the assignment to Government.

Perhaps you will be able to produce the above evidence, and I shall be glad to hear that you can do so.

In the event of your being unable to do this, the following persons will have to be parties to the assignment to Government:—

- Yourself as mortgagor.
- The representatives of Messrs. W. T. S. Oakes and James Oakes } Of one-fourth.
- and Mr. H. R. Dawson as mortgagees

The Official Assignee at Bombay representing Messrs. H. B. and E. Elsam } Of one-fourth.
The representative in this country of the estate of the late Mr. William Robson } Of one-half.

The difficulty as to the representation in this country to Mr. Robson's estate still remains. If I am correct in my supposition that no representation has been taken out, this should be done, as until it is there is no properly constituted person who can make any assignment on behalf of the estate.

I shall be much obliged by your letting me hear from you as soon as possible, with any evidence you are able to furnish regarding the difficulties in the title that I have pointed out.

I enclose a copy of my notes of the history of the title which may be of use to you, and if you can clear up any of the objection to the title you will find, I shall be very glad.

From H. W. BROWN, Esq., to the Government Solicitor, dated Vayitri, 13th May 1883.

Telegraph Office, Vayitri.

I am in receipt of your letter of the 17th ultimo and note contents. In reply, my house was purchased and possession taken by Government unconditionally nearly four months ago.

It formed no part of my contract that I was to guarantee my title to the property, and had I the slightest idea that you intended inspecting more than the original lease, I would have declined allowing you an inspection. With all due deference to your opinion, I am, however, quite prepared to give a fair title to the property; you yourself acknowledge that I have a good title to one-fourth of the Pookote Estate; the house was built by myself, and the ground proposed to be sold with it is considerably less than the one-fourth I am entitled to.

It is with Messrs. Oakes and Co.'s full knowledge and consent that I disposed of the property, and although my half interest in it was mortgaged to them in 1873, it did not include the property in question, as latter had been previously mortgaged by me to Dr. Henderson in March 1873 and redeemed by me from his executors on 19th November 1878, so there is no necessity for Messrs. Oakes and Co. being parties to the transfer.

No. 67.

Forwarded to the Superintending Engineer, Fourth Circle, for such action as he may think requisite. It will be noticed that the property is now in possession of the Telegraph Department.

26th May 1883.

(Signed) J. C. LARMINIE,
Executive Engineer.

No. 163 E., Public Works.

Seeing that Mr. Brown is required under the law to convey the property to Government with a proper title, which he seems unable to do, the Government Solicitor is requested to state whether Mr. Brown can now be called on to refund the purchase-money which has already been paid to him, or failing this, whether the money can be recovered by civil suit. The Government might in this case offer to rent the building, with the proviso that they will purchase whenever Mr. Brown is in a position to sell with a title which shall be satisfactory to the Government law officers.

2. As an alternative arrangement, the Government Solicitor is requested to report whether there would be any objection to the acquisition of the property under the Land Acquisition Act, and whether this would not get over the difficulty of defective title.

16th June 1883.

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Government.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 19th June 1883, No. 312.

I beg to acknowledge receipt of copy of Proceedings of Government, Public Works Department, dated 16th instant, No. 163 E.

2. Of the three courses suggested in those Proceedings, I think that of taking up under the Land Acquisition Act the property which Mr. Brown contracted to sell to Government would be the safest, as thereby all question as to the title would be avoided, for Government acquires a title under the Act itself to land taken up thereunder.

3. As, however, the purchase-money has already been paid to Mr. Brown, it would be advisable to communicate with him in the first instance, and, referring to the deficiency of title, to inform him that, with a view to getting over the difficulty, it is proposed by Government to acquire the land under the Act, and to award to him as compensation the amount already paid to him for purchase-money. If Mr. Brown makes no objection to this course and makes no claim for further compensation, the acquisition can be proceeded with; but should Mr. Brown make any further claim, which however is unlikely, it will be necessary to consider what course should be adopted with a view to compelling a refund of the purchase-money.

4. It would be hardly advisable to offer to rent the premises from Mr. Brown, as doing so would be an admission of his title, and of course Mr. Brown could give Government no better title for a term of years than he could in case of a sale.

From Colonel R. H. SANKEY, C.B., R.E., Secretary to Government, Public Works Department, to H. W. BROWN, Esq., Vayitri, Wynaad, dated Ootacamund, 21st June 1883, No. 172 E.

With reference to the recent correspondence with the Government Solicitor in regard to the title to the ownership of the building at Vayitri now occupied as a Telegraph Office, I am directed to inform you that the Government Solicitor points out that in the present circumstances of the title he is unable to draft a conveyance which would secure the Government in undisputed possession. The only way to remove the difficulty would be to take up the property on behalf of Government under the Land Acquisition Act. I am to inquire whether you see any objection to this course, and whether you would be prepared to accept as compensation the sum already paid to you as the price of the property.

2. An early reply will oblige.

From H. W. BROWN, Esq., to the Secretary to Government, Public Works Department, dated Vayitri, 5th July 1883.

I beg to acknowledge the receipt of your letter of the 21st ultimo, No. 172 E. In reply, I never agreed that the property in question should be taken up under the Land Acquisition Act. I have sold it to Government, put them in possession of, and have been paid for it. It is, therefore, theirs to do whatever they may please with it.

I must, however, remind you that I have held the land for a long time, and have been openly dealing with it for more than twelve years; and the Government Solicitor knows, or rather he ought to know, that such possession gives sufficient title, and if by the wording of the notice which Government propose to publish, or by any other act of theirs, doubt be thrown on my title, or any suggestion or hint is thrown out that I have no title, or that my title is defective in any way, I reserve to myself the right to obtain damages from them should I suffer by such act.

No. 215 E., Public Works.

Referred to the Government Solicitor for remarks and advice as to the course to be pursued.

10th July 1883.

To the Government Solicitor.

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Government.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 14th July 1883, No. 348.

I beg to acknowledge receipt of your memorandum of the 10th instant, No. 215 E., with copy of correspondence with Mr. Brown regarding the premises at Vayitri purchased by Government for a Telegraph Office.

2. There is only Mr. Brown's statement that he has held the land and openly dealt with it for over twelve years, and as a matter of fact this is not, so far as I can make out from the papers, the truth; for on the 30th September 1873, or less than ten years ago, Mr. Brown mortgaged to Messrs. Oakes and Co. his undivided half share of the property, of which the premises in question form a part. In this mortgage it is actually recited that Mr. Brown was entitled to a half share in the property mortgaged. That being so, it seems clear that Mr. Brown has, according to his own showing, only a half share in the premises he has pretended to sell to Government, though in truth, except perhaps for the law of limitation, as to which, however, there is, as above mentioned, only Mr. Brown's statement, Mr. Brown has only a fourth share in the property, as will be seen from the enclosed copy history I have made of the title.

3. I observe from Mr. Brown's letter of the 5th instant to your address that he carefully avoids answering the question put in your letter to him of the 21st ultimo, No. 172 E., viz., whether he will accept as compensation the sum already paid to him as the price of the property if it is taken up on behalf of Government under the Land Acquisition Act. As to this question, Mr. Brown merely threatens Government with an action for damages if any doubt be thrown on his title in acquiring the property.

4. I think there are two courses open to Government in this case—either to take up the property under the Land Acquisition Act and to decline to pay Mr. Brown anything more than he has been paid, or to file a suit against him to compel him to give Government a good title; or in the event of his failing to do so, for a decree that the contract be set aside, and that upon Government giving up the Telegraph Office Mr. Brown be decreed to repay the purchase-money.

5. In adopting the former of these courses, there will be no necessity to throw any doubt upon Mr. Brown's title; indeed, no mention of it need be made in the notice, and I would suggest that Mr. Brown be again asked for a specific reply to the question put to him in your letter, No. 172 E. If the other course I have suggested be decided on, it would, I think, be as well to lay the whole of the papers before the Advocate-General for his opinion before proceedings be adopted.

The history of the title is as follows:—On the 16th June 1846 a karar or lease was granted by the representatives of one Alliel Nair to Mr. G. J. Glasson of the former's jenm land called Walia Pookote in the Ernád Amshom in the Wynaad, with the exception of those places which were used for religious purposes and for elephant pits. The lease was for ninety-nine years from the 18th May 1845, and the rent reserved was Rs. 30 per annum. On the same day, 16th June 1846, Mr. Glasson, as Manager of the Wynaad Coffee Company, assigned the lease by an endorsement thereon to the proprietors of the Company in the following shares:—

George Johnston Glasson, four-tenths.	A. B. Sturdee, one-tenth.
William Elsam, two-tenths.	J. C. Ibbs, one-tenth.
George Turner, one-tenth.	H. Fraser, one-tenth.

In a list of deeds amongst the papers there is a pencil note to the effect that Mr. Ibbs, by an endorsement on certain articles of agreement which are not with the papers, assigned his share (in the property) to Messrs. Elsam, Turner and Rustomjee. There is also a pencil note to the effect that Mr. Glasson, on 26th February 1846, assigned his four-tenth share to Rustomjee. This is, however, before the date of the lease, which, however, dated back to 1st of May 1845.

By an agreement, dated 19th April 1849, between W. Elsam, George Turner and Rustomjee Nowrojee of the one part and William Robson of the other part, after reciting that Mr. Robson had agreed to purchase a half share in Walia Pookote Estate, it was agreed that the parties should continue the cultivation of the estate in manner therein provided, and that within twelve months the parties thereto of the one part should make a good title to an undivided moiety of the estate, and convey the same in legal form to Mr. Robson. A pencil note on this document mentions that no such conveyance was ever executed, and there is none amongst the title-deeds. About this time Mr. Robson appears to have obtained from the Nair a fresh lease, the date of which does not appear, of the Walia Pookote land for ninety-nine years, from the 18th May 1850, at the rent of Rs. 30 per annum.

By a deed, dated 25th July 1849, Mr. Sturdee transferred his share and interest in the land to William Elsam, Rustomjee Nowrojee and George Turner.

By a deed, dated 15th September 1849, Mr. Fraser transferred his share in "the lands denominated Baliah Pookot" to William Elsam, Rustomjee Nowrojee, and George Turner.

A pencil note in the abovementioned list shows that Rustomjee was Elsam's dubash and assigned his share, but to whom does not appear.

Another pencil note on the list suggests that on 3rd July 1854 George Turner assigned his share to Elsam, but the only document to support this suggestion is a letter from Turner to Henry Elsam, dated 3rd July 1854, in which Turner acknowledges receipt of his account current with the Wynaad Coffee Company and a draft on Messrs. H. H. Elsam for £374-5-7. There is, however, the additional fact in support of this supposed sale, viz., that Mr. Turner's name does not appear in any of the subsequent deeds.

Supposing that the above pencil notes are correct, and that Rustomjee's assignment of his share was to Mr. William Elsam, then by July 1854 that gentleman had one undivided moiety and Mr. Robson the other moiety, or a right thereto. This state of affairs does not, however, appear to have continued for any great length of time, for from a pencil note in the list of deeds Mr. Wm. Elsam appears to have divided his moiety with Messrs. Henry and Edward Elsam, giving them one-fourth between them and retaining one-fourth himself, and another pencil note shows that Henry and Edward Elsam became insolvent in Bombay. This fact is confirmed by a letter from the Official Assignee, Bombay, to Mr. Robson, dated 20th October 1855, and headed "Re H. B. and E. Elsam," in which the Official Assignee says that Mr. H. B. Elsam has brought to his notice the deserted state in which the "Pookote" Coffee Estate was reported to be, and enclosing a draft for Rs. 250 on account of the expenses of the estate; also by another letter from the Official Assignee to Mr. John McFarlane, Solicitor, dated 23rd December 1857, requesting permission to see the agreement between the proprietors of the Pookote Estate. This letter is also headed "Re H. B. and E. Elsam." In reply, Mr. McFarlane declined to allow an inspection of the deeds of the Pookote Estate, of which he said he had a bundle in his possession, until some arrangement was made for payment of his costs.

Further pencil notes on the list show that William Robson died 5th January 1859, leaving a will which was proved (it does not say where) on 7th April 1859, and that by his will he gave to his wife, Sarah Robson, all his real and personal estate for her own absolute use and appointed her executrix. A Power of Attorney from Mrs. Robson to Mr. Brown and others, dated 8th April 1859, corroborates the above, and shows that the will was proved in England.

So far the papers show, though they by no means prove, that the owners of the estate were Mrs. Robson as to one-half, Mr. William Elsam as to one-fourth, and Official Assignee, Bombay, as representing H. B. and E. Elsam, as to one-fourth.

By a deed, dated 1st January 1861, and recited in a deed, dated 1st May 1863, William Elsam assigned to trustees all his one-fourth in this estate upon trust for Mrs. Elsam for life, and after her death to dispose of the property as she should by deed or will direct or appoint. By the deed of 1st May 1863 Mr. and Mrs. Elsam, without even joining the trustees of the settlement of 1st January 1861, in whom Mr. Elsam's one-fourth share was vested, purported to assign the same to Mr. Brown. This deed of 1st May 1863 did not convey Mr. Elsam's one-fourth share in the estate to Mr. Brown at all, and were it not that Mr. Brown has been in possession for over twelve years, he would have no title.

By a deed, dated 30th September 1873, after reciting the lease to Mr. Robson, and that after divers mesne assignments, Mr. Brown was absolutely entitled to half share of the land comprised in the last-mentioned lease. Mr. Brown mortgaged such undivided half share to Messrs. W. T. S. Oakes, James Oakes, and H. R. Dawson. There is no re-conveyance to Mr. Brown or anything to show that this mortgage has been paid off, nor is there anything to show that Mr. Brown is entitled to more than a one-fourth share in the estate.

To give Government a good title, the necessary parties to the conveyance will be—
Mr. Brown as mortgagor. The representatives of W. T. S. Oakes } of one-fourth.
and James Oakes, deceased, and Mr. H. R. Dawson as mortgagees }
The Official Assignee of Bombay, representing H. B. and
E. Elsam, ... of one-fourth
The representative in this country of the late William Robson ... of one-half.
As regards the latter, there appears to have been no representation to Mr. Robson's estate in India.

From Major-General R. H. SANKEY, C.B., R.E., Secretary to Government, Public Works Department, to H. W. BROWN, Esq., Vayitri, Wynaad, dated 24th July 1883, No. 243 E.

I am directed to acknowledge the receipt of your letter, dated 5th July 1883, on the subject of the building occupied as a Telegraph Office at Vayitri, and to request the favor of a specific reply to the question asked in my letter of the 21st June 1883,

No. 172 E., viz., whether, in the event of the Government taking the property under the Land Acquisition Act, you would be prepared to accept as compensation the sum already paid to you as purchase-money.

2. The notice to be issued under the Act will make no mention of the validity or otherwise of your title.

3. An early reply will oblige.

From H. W. BROWN, Esq., to the Secretary to Government, Public Works Department, dated Vayitri, 12th August 1883.

I have the honor to acknowledge the receipt of your letter, No. 243 E., dated 24th ultimo.

In reply, should the Government take up the property alluded to under the Land Acquisition Act, I shall be prepared to accept Rs. 2,000 in addition to what I have already been paid as compensation in full.

Provided that the notice to be issued under the Act makes no mention as to the validity or otherwise of my title.

ORDER—dated 22nd August 1883, No. 2364 W., Public Works.

The papers will be referred for the opinion of the Advocate-General as to the course which the Government should take under the circumstances.

(True Extract.)

Major, R.E.,
Under Secy. to Govt., P.W.D.

To the Government Solicitor.

BUILDINGS AND ROADS
CIVIL WORKS.

Govt. of (1883) Madras.
PUBLIC WORKS.

Dated August, 22nd.

Recd.

Encl.

G.O., 22nd Aug. 1883, No. 2364 W.

AUGUST.

Messrs. Brown and Co.'s
Property at Vayitri

Papers on the subject of the purchase of—
referred to the Advocate-General.

No 229
W.

From

The Superintending Engineer,
Fourth Circle.

To

The Secretary to Government
M. D.

Madras.

Sir,

Enclosures 3.

With reference to G.O. No 312 W of 3rd

Letter from Govt.
Solicitor with 2 encls.
done

February 1883, sanctioning the purchase of Messrs

Brown and Co's property at Vythery for Rs. 4,500.

I have the honor to report that the Telegraph De-
partment being urgently in need of the building,

the Executive Engineer paid the purchase money

in March, on the understanding that the owner

would execute a proper deed of transfer as soon as

it had been prepared by the Government Solicitor

x vide his letter of
13th ult.

2. The owner states that he is ^{still} quite prepared

to give a fair title to the property, but the Govern-

ment Solicitor does not see how to prepare a fon-

-veyance and suggests that the correspondence

should

should be forwarded to Government for orders.

I have the honor to be,

Sir,

Your most obedt. servant.

L. Peatty - Colonel, R.E.,
Supg. Engineer 4th Circle.

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Ans 383 v 3.2.83

Should be p

P.W.C. No. 4903

From
The Supg. Engineer
1st Circle.

Dated 7th }
Received 11 } June 1883

No. 103 & 104
No. 229
Enclosure 3

Messrs Brown and Co's
property at Vythery—
Reports the difficulties in
executing the deed of transfer
of— for the Telegraph Dept.

286m

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NO. 282

MADRAS 22ND MAY 1883.

FROM,

ERNEST BARCLAY,

GOVERNMENT SOLICITOR,

MADRAS.

TO,

THE EXECUTIVE ENGINEER,

NILGIRI DISTRICT,

OOTACAMUND.

SIR,

1. WITH REFERENCE TO YOUR LETTER OF 20TH MARCH LAST
NO. 638 I FORWARD HEREWITH COPY OF A LETTER I ADDRESSED ON THE
17TH ULTIMO (NO. 221) TO MR. BROWN REGARDING HIS TITLE TO THE
PREMISES REFERRED TO IN YOUR LETTER AND WHICH FORM PART OF
THE POOKOTE ESTATE, AND COPY OF MR. BROWN'S REPLY DATED 13TH
INSTANT.

2. FROM MY LETTER TO MR. BROWN YOU WILL SEE HOW VERY
UNSATISFACTORY HIS TITLE TO ANYTHING BEYOND AN UNDIVIDED $\frac{1}{4}$
SHARE IN THE PROPERTY IS. MR. BROWN IN HIS LETTER SAYS THAT
THE GROUND PROPOSED TO BE SOLD IS CONSIDERABLY LESS THAN THE
 $\frac{1}{4}$ HE IS ENTITLED TO, BUT THAT IS NOT THE POINT, FOR WHAT MR.
BROWN IS ENTITLED TO IS NOT A PARTICULAR ONE FOURTH PART OF
THE ESTATE BUT AN UNDIVIDED $\frac{1}{4}$ SHARE IN THE WHOLE ESTATE,
SO THAT HE CANNOT CONVEY MORE THAN AN UNDIVIDED ONE FOURTH
SHARE IN ANY PART OF IT.

THEN

22/5/8

22/5/8

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3. THEN AGAIN MR. BROWN SAYS THAT HIS MORTGAGE TO MESSRS OAKES & CO DID NOT INCLUDE THE PROPERTY IN QUESTION AS IT HAD BEEN PREVIOUSLY MORTGAGED BY HIM TO DR. HENDERSON, BUT SUPPOSING THAT MR. BROWN WAS, AS HE ALLEGES, ENTITLED TO A MOIETY OF THE ESTATE, IT MUST BE AN UNDIVIDED MOIETY FOR THERE IS NOTHING TO SHOW THAT HE HAD ANY PARTICULAR DIVIDED SHARE OF THE ESTATE, AND HIS MORTGAGE TO MESSRS OAKES AND CO WOULD BE OF AN UNDIVIDED MOIETY IN THE WHOLE ESTATE SUBJECT TO DR HENDERSON'S PREVIOUS MORTGAGE. IN FACT MESSRS OAKES AND CO WOULD HAVE ONLY A SECOND MORTGAGE.

4. MR. BROWN SAYS IT FORMED NO PART OF HIS CONTRACT THAT HE WAS TO GUARANTEE HIS TITLE TO THE PROPERTY AND THAT HAD HE THE SLIGHTEST IDEA THAT INTENDED INSPECTING MORE THAN THE ORIGINAL LEASE HE WOULD HAVE DECLINED ALLOWING ME AN INSPECTION. MR. BROWN HAS HOWEVER OVERLOOKED THE PROVISIONS OF SECTION 55 OF THE TRANSFER OF PROPERTY ACT WHICH HOWEVER IS NO NEW LAW. SOME OF THESE PROVISIONS ARE THAT THE SELLER IS BOUND (A) TO DISCLOSE TO THE BUYER ANY MATERIAL DEFECT IN THE PROPERTY OF WHICH THE SELLER IS AWARE AND THE BUYER IS NOT AWARE AND COULD NOT WITH ORDINARY CARE DISCOVER, AND I NEED HARDLY SAY THAT INSUFFICIENCY OF TITLE IS A VERY MATERIAL DEFECT OF WHICH MR. BROWN AS SELLER MUST BE TAKEN TO BE AWARE AND WHICH GOVERNMENT COULD NOT WITHOUT AN INSPECTION OF THE TITLE DEEDS BE AWARE OR DISCOVER (B) TO PRODUCE TO THE BUYER ON HIS REQUEST FOR EXAMINATION ALL DOCUMENTS OF TITLE RELATING TO THE PROPERTY WHICH ARE IN THE SELLER'S POSSESSION OR POWER (C) TO ANSWER TO THE BEST OF HIS INFORMATION ALL RELEVANT QUESTIONS PUT TO HIM BY THE BUYER IN RESPECT TO THE PROPERTY

OR

OR THE TITLE THERETO (D) ON PAYMENT OR TENDER OF THE AMOUNT DUE IN RESPECT OF THE PRICE TO EXECUTE A PROPER CONVEYANCE OF THE PROPERTY WHEN THE BUYER TENDERS IT TO HIM FOR EXECUTION AT A PROPER TIME AND PLACE, AND, MOST IMPORTANT OF ALL, THAT THE SELLER SHALL BE DEEMED TO CONTRACT WITH THE BUYER THAT THE INTEREST WHICH THE SELLER PROFFESSES TO TRANSFER TO THE BUYER SUBSISTS AND THAT HE HAS POWER TO TRANSFER THE SAME. AS A MATTER OF LAW IT DID FORM PART OF MR. BROWN'S CONTRACT THAT HE WAS TO GUARANTEE HIS TITLE TO THE PROPERTY. HE CONTRACTED TO SELL TO GOVERNMENT CERTAIN LAND IN WHICH HE HAS, ACCORDING TO HIS OWN SHOWING, BUT AN UNDIVIDED HALF SHARE, AND THAT SUBJECT TO A MORTGAGE, AND IN WHICH, ACCORDING TO THE TITLE DEEDS HE HAS ONLY AN UNDIVIDED ONE FOURTH SHARE, SO THAT REALLY HE IS, AS MATTERS STAND AT PRESENT, UNABLE TO PERFORM HIS CONTRACT FOR HE CANNOT EXECUTE A PROPER CONVEYANCE OF THE PROPERTY HE CONTRACTED TO SELL.

5. I DO NOT SEE HOW I AM TO PREPARE A CONVEYANCE OF THE PROPERTY FROM MR. BROWN TO GOVERNMENT. I WOULD SUGGEST THAT THE CORRESPONDENCE BE FORWARDED TO GOVERNMENT FOR ORDERS.

I AM, SIR,

YOUR OBEДИENT SERVANT.

Quintin Hailley

GOVERNMENT SOLICITOR.

1467 1 SP
Forwarded to Superintending Engineer Fourth Circle for such action as he may think requisite. It will be noticed that the property is now in possession of the Telegraph Department.
28 May 1883
Executive Engineer

10728687
458
2364
9
NO. 221 .

MADRAS 17TH APRIL 1893 .

DEAR SIR,

THE TITLE DEEDS RELATING TO YOUR PROPERTY CONSISTING OF A HOUSE GODOWN AND ABOUT THREE ACRES OF LAND FORMING PART OF THE POOKOTE ESTATE WYNAAD HAVE BEEN SENT TO ME BY MESSIEURS OAKES AND CO FOR INSPECTION AND EXAMINATION ON BEHALF OF GOVERNMENT .

I HAVE MADE A CAREFUL AND COMPLETE EXAMINATION OF THESE DEEDS AND FIND THAT THE TITLE IS IN A VERY UNSATISFACTORY CONDITION .

THE EARLIER TITLE IS EXTREMELY INCOMPLETE BUT IT SEEMS THAT IN THE YEAR 1854 THE ESTATE WAS VESTED IN THE FOLLOWING PERSONS IN THE SHARES SPECIFIED BELOW .

ONE HALF IN MR. WILLIAM ROBSON .

ONE FOURTH IN MR. WILLIAM ELSAM .

ONE FOURTH IN MESSRS H. B. AND E. ELSAM .

THE TITLE TO MR. ROBSON'S MOIETY SEEMS TO BE TOLERABLY CLEAR BUT THERE IS NO EVIDENCE TO SHOW HOW MESSRS H. B. AND E. ELSAM BECAME ENTITLED TO THEIR SHARE BEYOND SOME PENCIL NOTES ON A SCHEDULE OF DEEDS WHICH IS WITH THE PAPERS .

IN FACT THE GREATER PART OF THE EVIDENCE IF SUCH IT CAN BE CALLED AS TO THE DEVOLUTION OF TITLE IS DERIVED FROM PENCIL NOTES ON THE ABOVE SCHEDULE .

BY A DEED DATED THE 1ST MAY 1893 MR. WILLIAM ELSAM CONVEYED HIS 1/4TH SHARE TO YOURSELF AND THIS SEEMS TO BE THE ONLY DIRECT INTEREST YOU HAVE IN THE PROPERTY AND EVEN THIS SHARE IS ENCUMBERED BY MORTGAGE AS HEREAFTER APPEARS .

MESSRS H. B. AND E. ELSAM APPEAR TO HAVE
BECOME INSOLVENT IN OR ABOUT 1854 AND THEIR SHARE BECAME
VESTED IN THE OFFICIAL ASSIGNEE AT BOMBAY. I CAN FIND
NO TRACE AMONG THE TITLE DEEDS OF THIS SHARE EVER HAVING
BEEN CONVEYED TO YOU. PERHAPS YOU MAY BE ABLE TO THROW
SOME LIGHT ON THE SUBJECT. IF NO ASSIGNMENT HAS BEEN MADE
TO YOU THE INTEREST STILL REMAINS IN THE OFFICIAL ASSIGNEE
AT BOMBAY AND HE WILL HAVE TO BE A PARTY TO ANY ASSIGNMENT
TO GOVERNMENT.

ANOTHER FLAW IN THE TITLE IS THE MORTGAGE BY
YOU TO MESSRS OAKES AND CO DATED 30TH SEPTEMBER 1873 OF
YOUR SO CALLED MOIETY IN THE PROPERTY OF WHICH NO RECONVEY-
ANCE AS FAR AS I CAN DISCOVER HAS EVER BEEN MADE IF NO RE
CONVEYANCE HAS BEEN MADE THE REPRESENTATIVES OF THE THEN
PARTNERS OF OAKES & CO AND MR. DAWSON WILL HAVE TO BE
RECONVEYING PARTIES TO GOVERNMENT ON AN ASSIGNMENT BEING
MADE.

AGAIN NO REPRESENTATION APPEARS EVER TO HAVE
BEEN TAKEN OUT TO MR. WILLIAM ROBSON'S ESTATE IN THIS
COUNTRY THE PROPER CONVEYING PARTY OF MR. WILLIAM ROBSON'S
INTEREST IS HIS REPRESENTATIVE HERE AS HIS EXECUTRIX IN
ENGLAND HAS NO POWER OVER PROPERTY IN INDIA.

THE TITLE BEING IN THIS EXTREMELY UNSATISFAC-
TORY CONDITION I CANNOT ADVISE GOVERNMENT TO ACCEPT IT UN-
TIL AT ALL EVENTS SOME SATISFACTORY EVIDENCE IS PRODUCED
OF THE ASSIGNMENT TO YOU FROM THE OFFICIAL ASSIGNEE AT
BOMBAY AND OF A RECONVEYANCE TO YOU FROM MESSRS OAKES & CO

OR

5-50 2364
10
OR OF THE READINESS OF THE REPRESENTATIVES OF THE FORMER
PARTNERS MESSRS W. T. S. AND JAMES OAKES AND OF MR. DAWSON TO
BECOME PARTIES TO THE ASSIGNMENT TO GOVERNMENT.

PERHAPS YOU WILL BE ABLE TO PRODUCE THE ABOVE EVIDENCE
AND I SHALL BE GLAD TO HEAR THAT YOU CAN DO SO.

IN THE EVENT OF YOUR BEING UNABLE TO DO THIS THE
FOLLOWING PERSONS WILL HAVE TO BE PARTIES TO THE ASSIGNMENT TO
GOVERNMENT.

YOURSELF AS MORTGAGOR. THE REPRESENTATIVES OF	}	OF 1/4TH
MESSRS W. T. S. OAKES AND JAMES OAKES AND		
MR. H. B. DAWSON AS MORTGAGEES.	}	OF 1/4TH
THE OFFICIAL ASSIGNEE AT BOMBAY REPRESENTING		
MESSRS H. B. AND E. ELSAM.	}	OF 1/2
THE REPRESENTATIVE IN THIS COUNTRY OF THE ESTATE		
OF THE LATE MR. WILLIAM ROBSON.		

THE DIFFICULTY AS TO THE REPRESENTATION IN THIS
COUNTRY TO MR. ROBSON'S ESTATE STILL REMAINS. IF I AM CORRECT
IN MY SUPPOSITION THAT NO REPRESENTATION HAS BEEN TAKEN OUT
THIS SHOULD BE DONE AS UNTIL IT IS THERE IS NO PROPERLY CON-
STITUTED PERSON WHO CAN MAKE ANY ASSIGNMENT ON BEHALF OF THE
ESTATE.

I SHALL BE MUCH OBLIGED BY YOUR LETTING ME HEAR
FROM YOU AS SOON AS POSSIBLE WITH ANY EVIDENCE YOU ARE ABLE
TO FURNISH REGARDING THE DIFFICULTIES IN THE TITLE THAT I HAVE
POINTED OUT.

I ENCLOSE A COPY OF MY NOTES OF THE HISTORY OF THE
TITLE WHICH MAY BE OF USE TO YOU AND IF YOU CAN CLEAR UP ANY

OF

OF THE OBJECTIONS TO THE TITLE YOU WILL FIND, I SHALL BE
VERY GLAD.

I AM, DEAR SIR,

YOURS FAITHFULLY

(SD) ERNEST BARCLAY.

H. W. H. BROWN ESQRE

POOKOTE,

WYN AAD.

(A TRUE COPY.)

Ernest Barclay

GOVERNMENT SOLICITOR.

P.W. 2
4903/83

P.W. 2 & 1/10 June 1883

From
The Executive Engineer,
Nilgiri Division

Dated 26 May 1885
Recd.

No. 1163. Ed. 16. June 1885

No. 67

Encls. —

Mr. Brown's Property,
Pookate, Vythery.

Submits for necessary
action correspondence from
Govt. Solicitor pointing out
the difficulties in preparing
the deed of conveyance of

207286M

VYTHERY,

MAY 13TH 1883.

DEAR SIR,

TELEGRAPH OFFICE VYTHERY.

I AM IN RECEIPT OF YOUR LETTER OF THE 17TH ULTIMO
AND NOTE CONTENTS. IN REPLY MY HOUSE WAS PURCHASED AND
POSSESSION TAKEN BY GOVERNMENT UNCONDITIONALLY NEARLY FOUR
MONTHS AGO.

IT FORMED NO PART OF MY CONTRACT THAT I WAS TO
GUARANTEE MY TITLE TO THE PROPERTY AND HAD I THE SLIGHTEST IDEA
THAT YOU INTENDED INSPECTING MORE THAN THE ORIGINAL LEASE I
WOULD HAVE DECLINED ALLOWING YOU AN INSPECTION. WITH ALL DUE
DEFERENCE TO YOUR OPINION I AM HOWEVER QUITE PREPARED TO GIVE
A FAIR TITLE TO THE PROPERTY YOU YOURSELF ACKNOWLEDGE THAT I
HAVE A GOOD TITLE TO ONE FOURTH OF THE POOKOTE ESTATE THE
HOUSE WAS BUILT BY MYSELF AND THE GROUND PROPOSED TO BE SOLD
WITH IT IS CONSIDERABLY LESS THAN THE ONE FOURTH I AM ENTITLED
TO.

IT IS WITH MESSRS OAKES & CO'S FULL KNOWLEDGE AND
CONSENT THAT I DISPOSED OF THE PROPERTY AND ALTHOUGH MY HALF
INTEREST IN IT WAS MORTGAGED TO THEM IN 1873 IT DID NOT IN-
CLUDE THE PROPERTY IN QUESTION AS LATTER HAD BEEN PREVIOUSLY
MORTGAGED BY ME TO DR. HENDERSON IN MARCH 1873 AND REDEEMED
BY ME FROM HIS EXECUTORS ON NOVEMBER 19TH 1878 SO THERE IS
NO NECESSITY FOR MESSRS OAKES & CO BEING PARTIES TO THE
TRANSFER.

YOURS

YOURS FAITHFULLY.

(SD.) H. W. BROWN.

TO,

ERNEST BARCLAY, ESQ.,

GOVERNMENT SOLICITOR,

MADRAS.

(A TRUE COPY.)

Ernest Barclay

GOVERNMENT SOLICITOR.

*P.W. 3
4903/83*

No 163 E. of 16th June 1883

*2364
13*

*Letter from the Government Solicitor to the Executive
Engg. Nilgiri Dist. No 282 of 12th May 1883 on the subject
of the Title to the property at Vayitru taken up for
a Telegraph office.*

P.P.

*Seeing that Mr. Brown
is required under the law to
convey the property to Govt
with a proper Title, which
he seems unable to do, the
Govt Solicitor is requested to
state whether Mr. Brown can
now be called on to refund
the purchase money which has
already been paid to him or
feeling this, whether the money
can be recovered by civil
suit. The Govt might in
this case offer to remit the*

building with the proviso
that they will purchase
whenever Mr Brown is in
a position to sell with a

Title which shall be satisfactory
to the Government law officers

2. As an alternative arrange-
ment the Government Solicitor
is requested to report whether

there would be any objection
to the acquisition of the property

under the Land Acquisition
Act, and whether this would

not get over the difficulty of
defective Title.

(S.) R. H. Langley, Col. R.E.

Secy to Govt. 17 Sept

(S.) R.P.

The Govt. Solicitor

Sept. 16/83

No 312

98 2364
14

Madras 19 June 1883

From

C

Ernest Barclay

Government Solicitor

Madras

To

The Secretary to Government

Public Works Department

Cotacamund

Sir,

1. I beg to acknowledge receipt of Copy of
Proceedings of Government Public Works Department
dated 16th instant No 163 E.

2. Of the three Courses suggested in those
Proceedings, I think that of taking up under the
Land Acquisition Act the property which Mr Brown
contracted to sell to Government, would be the safest
as thereby all question as to the title would be
avoided for Government acquires a title under
the Act itself to land taken up thereunder.

3. As however the purchase money has already
been paid to Mr Brown it would be advisable to
communicate with him in the first instance and
referring to the deficiency of title to inform him
that with a view to getting over the difficulty it is
proposed by Government to acquire the land under
the Act and to award to him as Compensation the
amount already paid to him for purchase money.
If Mr Brown makes no objection to this Course and
makes no claim for further Compensation the
acquisition can be proceeded with but should Mr.
Brown make any further claim, which however is
unlikely, it will be necessary to consider what Course
should be adopted with a view to compelling a

refund

refund of the purchase money.

It would be hardly advisable to offer
to rent the premises from Mr Brown as doing
so would be an admission of his title and of course
Mr Brown could give Government no better title for a
term of years than he could in case of a sale.

I am, Sir,
Your obedient Servant
Wm Barclay
Government Solicitor

2364
15

N^o 163. E of 16-6-83
G.O. 383 W of 3-2-83

W.C. 5237
C. N. called for
20/5.

N^o 172 E of 21-6-83

N^o 172 E of 21-6-83
20/5
M.D. 2364
10 P. 16
A. W. Brown Esq.
Mysore. Mysnad
Dated, Putnamund June 13

Sir
With reference to the recent
correspondence with the Government
Solicitor in regard to the title to
the ownership of the building at
Mysore now occupied as a Telegraph office,
I am directed to inform you that the
Government Solicitor points out that
in the present circumstances of the
title he is unable to draft a con-
veyance which would secure the
Government in undisputed possession.
The only way to remove the difficulty
would be to take up the property on
behalf of Government under the
Land Acquisition Act. I am to
enquire whether you see any objection
to this course, and whether you would
be prepared to accept as compensation
the sum already paid to you as

the price of the property.

2. An early reply will oblige.

I have &c

By M.P.

Wm R.H. I.

Secy. to Govt. Ind.

Aug 2 to Sept 21. 1861

215 E. 47th St. N.Y.

Dep't. 21/6

the price of the property.

No 215 Ed/10th July 1883.

2364

11 P

Sydney. July 5th 1883

2364

17

To
Colonel Stanley. R. E.
Secretary to Govt. P.W. Dept
Ootacamund.

Sir

I beg to acknowledge the receipt
of your letter of the 21st ult No 172 E.
In reply. I never agreed that the property
in question should be taken up under the
Land Acquisition Act. I have sold it to
Government. put them in possession of, and
have been paid for it. It is therefore
theirs to do whatever they may please
with it.

I must however remind you that I
have held the land for a long time
and have been freely dealing with it for
more than 12 years. and the Government
Solicitor General. or rather he ought to know
that such possession gives sufficient title.
And if by the wording of the notice which
Government propose to publish or by any other
act of theirs doubt be thrown on my title, or
any suggestion or hint is thrown out that I

12 P

have no title, or that my title is defective
in any way. I reserve to myself the
right to obtain damages from them should
I suffer by such act.

2364

18

I have the honor to be
Sir

Yours most obedt Servt

J W Brown

Received
21st July 1883

No 215 Ed/10th July 1883.

2364
19

Copy of

Letter to Mr Brown, Virginia-Wynad No 172 Ed/21st June 1883.

do from do

dated 5th July 1883.

13 P

Referred to the
Government Solicitor for
remarks, and advice as to
the course to be pursued.

(S.) R. H. Laukey, C. K. R.

Secy.

(S.) R. H.

To,

The Govt. Solicitor

Recd 10/7

No 383
Ed/3.2.83
" 163 Ed/16.6.83
" 172 Ed/21.6.83

No 215 Ed/10th July

No 383 Ed/3.2.83
" 163 Ed/16.6.83
" 172 Ed/21.6.83

6256-7

N^o 348.

14th 2364
20
Madras 14th July 1883.

From.

Ernest Barclay

Government Solicitor

Madras.

To.

The Secretary to Government.

Public Works Department

Cotacamund

Sir,

1. I beg to acknowledge receipt of your memo of the 10th inst. N^o 2152 with copy correspondence with Mr. Brown regarding the premises at Vythang purchased by Government for a Telegraph office.

2. There is only Mr. Brown's statement that he has held the land and openly dealt with it for over 12 years and as a matter of fact this is not, so far as I can make out from the papers, the truth; for, on the 30th September 1873, or less than ten years ago Mr. Brown mortgaged to Messrs Oakes & Co. his undivided half share of the property of which the premises in question form a part. In this mortgage it is actually recited that Mr. Brown was entitled to a half share in the property mortgaged. That being so it seems clear that Mr. Brown has, according to his own showing only a half share in the premises he has pretended to

Sell

sell to Government, though in truth, except perhaps
in the law of limitation, as to which however there is, as
has been mentioned, only Mr Brown's statement. Mr Brown
is only a fourth share in the property as will be seen
from the enclosed copy history. I have made of the title
I observe from Mr Brown's letter of the 5th inst to your
address that he carefully avoids answering the question
put in your letter to him of the 21st ulto: N^o 172^E viz
whether he will accept as compensation the sum already
aid to him as the price of the property if it is taken up
on behalf of Government under the Land Acquisition Act
As to this question Mr Brown merely threatens Govern-
ment with an action for damages if any doubt be thrown
on his title in acquiring the property.

I think there are two courses open to Government
in this case, either to take up the property under the
Land Acquisition Act and to decline to pay Mr Brown
anything more than he has been paid, or to file a suit
against him to compel him to give Government a good
title, or in the event of his failing to do so, for a decree
that the contract be set aside and that upon Government
taking up the Telegraph Office Mr Brown be decreed to
repay the purchase money.

5. In adopting the former of these courses there
will be no necessity to throw any doubt upon Mr
Brown's title, indeed no mention of it need be made
in the notice, and I would suggest that Mr Brown be
again

again asked for a specific reply to the question put
to him in your letter N^o 172^E. If the other course I
have suggested be decided on, it would, I think, be a
well to lay the whole of the papers before the Advocate
General for his opinion before proceedings be adopted.

I am, Sir

Your Obedient Servant
Henric Barclay
Government Solicitor

No 215 E of 10-7-83
 No 172 E of 21-June/83
 " 163 E of 16-6-83
 No 383 W of 3-2-83

Called for
 (1883) Department
 From
 Ernest Barclay
 Government School
 Madras

To
 The Secretary to Government
 Public Works Department
 Ootacamund

No 340

Madras dated 14 July 1883

Received

No 243 E of July 24/83

Enclosure I

Subject

Reporting upon Mr Brown's
 title to the premises at Kyzhery
 and suggesting what course should
 be adopted to securely vest
 the property in Government

16th June 1846
 2364
 22

The history of the title is as follows. On the 16th June
 1846 a Narad or lease was granted by the representa-
 tives of one Allid Nair to Mr G. J. Glasson of the former
 Penn Land called Nalio Pooote in the Ennad
 Anshom in the Wynaad with the exception of those
 places which were used for religious purposes and for
 elephant pits. The lease was for 99 years from the
 15th May 1845 and the rent reserved was Rupees 30 per
 annum. On the same day 16th June 1846 Mr Glasson
 as Manager of the Wynaad Coffee Company assigned
 the lease by an endorsement thereon to the proprietors
 of the Company in the following shares.

George Johnston Glasson	4/10 th
William Elsaw	2/10 th
George Turner	1/10 th
A. D. Sturdee	1/10 th
J. C. Ibb	1/10 th
A. Fraser	1/10 th

In a list of deeds amongst the papers there is a
 pencil note to the effect that Mr Ibb by an endorse-
 ment on certain articles of agreement which are not
 with the papers assigned his share (in the property) to
 Messrs Elsaw Turner and Anstonjee. There is also a
 pencil note to the effect that Mr Glasson on 26 February

1846

Air 20/7 R 23/7
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1846 assigned his $\frac{1}{10}$ share to Anotompe. This is however before the date of the lease which however dated back to 1st of May 1845.

By an agreement dated 19th April 1849, between W. Elsom, George Turner and Anotompe Norrope of the one part and William Robson of the other part, after stating that Mr Robson had agreed to purchase a half share in Nalia Tookoto Estate, it was agreed that the parties should continue the cultivation of the estate in manner therein provided and that within twelve months the parties thereto of the one part should make a good title to an undivided moiety of the estate and convey the same in legal form to Mr Robson. A pencil note on this document mentions that no such conveyance was ever effected and there is none amongst the title deeds. About this time Mr Robson appears to have obtained from the Main a fresh lease the date of which does not appear of the Nalia Tookoto land for 99 years from the 18th May 1850. at the rent of Rs 30 per annum.

By a deed dated 25th July 1849. Mr Sturges has transferred his share and interest in the land to William Elsom, Anotompe Norrope and George Turner.

By a deed dated 16th September 1849. Mr Fraser transferred his share in the lands denominated 'Pahahi Tookoto'

1788
Tookoto to William Elsom, Anotompe Norrope and George Turner.

2364
A pencil note in the above mentioned list shows that Anotompe was Elsom's dubash and assigned his share, but to whom does not appear.

Another pencil note on the list suggests that on 3rd July 1854 George Turner assigned his share to Elsom but the only document to support this suggestion is a letter from Turner to Henry Elsom dated 3rd July 1854 in which Turner acknowledges receipt of his account current with the Wynard Coffee Company and a draft on Messrs M. M. Elsom for £374.5.7. There is however the additional fact ~~that~~ in support of this supposed sale viz that Mr Turner's name does not appear in any of the subsequent deeds.

Supposing that the above pencil notes are correct and that Anotompe's assignment of his share was to Mr. William Elsom then by July 1854 that gentlemen had one undivided moiety and Mr Robson the other moiety or a right thereto. This state of affairs does not however appear to have continued for any great length of time for from a pencil note in the list of deeds Mr Wm Elsom appears to have divided his moiety with Messrs Henry and Edward Elsom giving them $\frac{1}{4}$ between them.

them and retaining $\frac{1}{4}$ himself and another pencil note shows that Henry and Edward Elsom became indentured in Bombay. This fact is confirmed by a letter from the Official Assignee Bombay to Mr Robson dated 20th October 1855 and headed "Re A.B. & E. Elsom" in which the Official Assignee says that Mr A.B. Elsom has brought to his notice the deserted state in which the "Footscote" Office Estate was reported to be and enclosing a draft for Rs. 250 on account of the expenses of the estate: also by another letter from the Official Assignee to Mr John McFarlane, Solicitor, dated 23rd December 1857, requesting permission to see the agreement between the proprietors of the Footscote Estate. This letter is also headed "Re A.B. & E. Elsom" In reply Mr McFarlane declined to allow an inspection of the deeds of the Footscote Estate of which he said he had a bundle in his possession until some arrangement was made for payment of his costs.

Further pencil notes on the list show that William Robson died 5th January 1859 leaving a Will which was proved (it does not say where) on 7th April 1859 and that by his Will he gave to his wife Sarah Robson all his real and personal estate for her own absolute use and appointed her Executrix. A Power of Attorney from Mrs Robson to Mr Brown and others dated 8th April 1859 corroborates the above and shows that the Will was proved in England.

1855 2364
So far the papers show though they by no means prove that the owners of the Estate were Mr Robson as to $\frac{1}{2}$ Mr Wm Elsom as to $\frac{1}{4}$ and the Official Assignee Bombay as representing A.B. & E. Elsom as to $\frac{1}{4}$.

By a deed dated 1st January 1861 and recited in a deed dated 1st May 1863 Wm Elsom assigned to Trustees all his $\frac{1}{4}$ in this estate upon trust for Mrs Elsom for life and after her death to dispose of the property as she should by deed or Will direct or appoint. By the deed of 1st May 1863 Mr & Mrs Elsom with or without even joining the trustees of the settlement of 1st January 1861 in whom Mr Elsom's $\frac{1}{4}$ share was vested purporting to assign the same to Mr Brown. This deed of 1st May 1863 did not convey Mr Elsom's $\frac{1}{4}$ share in the estate to Mr Brown at all, and were it not that Mr Brown has been in possession for over 12 years he would have no title.

By a deed dated 30th September 1873 after reciting the lease to Mr Robson and that after divers means assignments Mr Brown was absolutely entitled to $\frac{1}{2}$ share of the land comprised in the last mentioned lease Mr Brown mortgaged such undivided half share to Messrs W. J. S. Oakes, James Oakes and A. R. Dawson. There is no conveyance to Mr Brown or anything to show that this mortgage has been paid off nor is there anything to show that Mr Brown is entitled to more than a $\frac{1}{4}$ share in the estate.

then
 not to give Government a good title the necessary parties
 went to the conveyance will be.
 Off. Mr. Brown as Mortgagee
 her. Mr. Representatives of W.
 Off. J. S. Oakes and James } 1/4
 to be Oakes deceased and Mr.
 Off. M. R. Dawson as Mortgagee
 for the Official Assignees of }
 about Bombay representing M. R. } 1/4
 John and E. Elsom
 require Mr. Representative in this }
 property country of the late William } 1/2
 Robson

dec. As regards the latter there appears to have been
 no representation to Mr. Robson's estate in India

No 243. Edf July 24 1883. 19 P
 2364
 26

To,
 H. W. Brown Esq^r
 Vayttri,
 Wyanad

Sir,

I am directed to acknowledge
 the receipt of your letter dated
 5th July 1883, on the subject of
 the building occupied as a
 Telegraph Office at Vayttri,
 and to request the favor of a
 specific reply to the question
 asked in my letter of the
 21st June 1883 No 172 E.

It is whether, in the event
 of the Govt taking the property
 under the Land Acquisition
 Act, you would be prepared
 to accept as compensation
 the sum already paid to you

purchase money.

The notice to be issued under the Act will make no mention of the validity or otherwise of your title.

An early reply will oblige

I have &c

(S^d) R. H. L. Esq. & Co. Gt. St. Martin's Lane

RE

Recd to Gt. St. Martin's Lane

18/7/87

18/7/87

Don't the Public 236d

land officers and us
my friend until he was
opened. This head better
18/8/87 observed in case

Solomon

Mr. Brown
Mr. Brown
Mr. Brown

20 P
2364
29

Porko. Sythens
August 12 1883

To
Major General R. H. Sankley R. E.
Secretary to Government P. W. D.
Cotacumand

Sir

I have the honor to acknowledge
the receipt of your letter No 243/E dated
24th ult.

In reply. Should the Government take
the property added to under the Land
Acquisition Act. I shall be prepared to pay
the sum of two thousand in addition to what
I have already been paid as compensation
in full.

Provided that the notice to be issued under
the Act makes no mention as to the validity
or otherwise of my title.

I have the honor to be
Sir

Your most obedt servant

H. W. Brown

G. A. 383 W. A. 3. 2.83

1638 of 16. 6. 83.

1728 of 21. 6. 83.

2158 of 10. 7. 83.

2438 of 24. 7. 83.

P. W. C. No. 7188

2364
28

Recd. 22 Aug 83

in 16/8
02. 8. 18. 84. 18
Dated
1883

old be made
and officers and no
my friend until he was
applied. This had been
16/8 observed in case

Solintan
Mr Brown's
proving unsatisfactory
he was asked

I am inclined to think
that before taking further
action the case should
be submitted for the
opinion of the Advocate
General who should be
requested to advise
as to the course to be
pursued - I don't quite fancy
putting the Land Acquisition
Act in force at this stage
of the proceedings - We have
actually acquired the property
by private negotiation and
what we want now is to
compel our Vendor to
give us a good title or
return the money.
It will be safer to have
O'Halloran's advice -
In future these purchases
should be made through
the land officers and no
money paid until the title
is assured. This has been
observed in case

Don't like Sullivan
23/4/41
For order 29
23/4/41

A reply having now
been received from Mr
Barrow as to his terms
he would be prepared to
accept the building at
Vithang if taken up under
the Land Acquisition Act
orders are now required
as to the course to be
followed

As the H.M. is aware
the premises were purchased
on an agreement, the Executive
Engineer paying the amount
agreed on (£4500), on
the understanding that
the owner would execute
a proper deed of transfer
as soon as this had been
prepared by the Govt.
Solicitor

Mr Barrow's title
proving unsatisfactory
he was asked whether

in case the property
were taken up under the
Act he would be pre-
pared to accept as
compensation the sum
already paid - at the
same time he was
assured that the
notice to be issued
under the Act would
make no mention of
the validity or otherwise
of his title

To this he replies under
date 12th inst. that he
will be prepared to
accept Rs 2000 in addition
to the Rs 4500 which
have already been paid
to him

As will be seen from
the Valuation Estimate
of the Mautia Engraves
previously framed Rs
4500 is the full value
The Govt. Solicitor

- notice under the
Acquisition Act properly

17/8.

2384 in para 4 of his letter
No 348 of 14th July indicates
two courses which might
be taken the first of
which is "to take up the
property under the Land
Acquisition Act and ~~and~~ ^{thereby}
to pay Mr. Brown anything
more than he has been
paid"

As this appears to be
the most plain & satisfactory
course to follow I would
be glad to have authority
to issue the needed
notification at once

Atte

15/8/83

2364
31

C. M. W.

Butter dit. the
Legal opinion as to
the course advised
by you, to which
otherwise I presume
Gov. will have no
objection

Att

16.6

366

the purchase of

purchase with a bad
title. In fact the fact
Solicitor declines to
draft a conveyance
under the circumstances.

The onus of conveying
with a proper title rests
on the Mr. Brown. As he
is unable to do this
he is bound in law
to refund the money.
If he declines to do
so, it can be recovered
by suit.

The fact might appear
to render the building
from Mr. Brown into
the premises that they
will purchase whenever
Mr. Brown can produce
a title satisfactory to
the law officers of
the Govt.?

R.S.
15/6

23^{dy}
-32

W

Please read S. & W. note on
back regarding conveyance of house
Brown + Co's property at by thing to
forward to the Deputable Deput.

The Govt Solicitor takes
exception to the title + suggests
that the conveyance should be
forwarded to Govt.

The Govt has already paid
the purchase money agreed on.

I do not suggest that Govt
Solicitor should take the
advocate's opinion. This
may perhaps be done, but it is
not clear to me that it will
simplify the matter.

C.B. row.
14/6

I do

The Govt Solicitor
expounds the law
very clearly, and it
proves that the
title is imperfect.
The Advocate General
cannot rectify the
title. and Govt. cannot

office, the purchase of

4903

Messrs Brown & Co
property at Vytteri.
Wayward. recently
purchased for the
Telegraph Dept.

To Dru

For orders.

As the Govt Solicitor
cannot advise in the
matter, it is difficult
to see how far we are to
arrive at a decision.
The Govt Solicitor might
perhaps be asked
to take the Advocate
General's opinion?

It will be seen
that Messrs Brown &
Co say they are pre-
pared to give a fair
title to the property.

At
14/6

2364
33

P.W. Department

Read the following:-

- Letter from the Superintending Engineer ^{4th Circle} No. 229 of 7th June/83
- Memo. to the Government Solicitor No. 163 C of 16 June/83
- Letter from the Government Solicitor No. 312 of 19th June/83
- Letter to H.W. Brown Esquire No. 192 C of 21st June/83.
- Letter from H.W. Brown Esquire of 5th July 1883.
- Memo. to the Government Solicitor No. 215 C of 10 July/83
- Letter from the Government Solicitor No. 348 of 14 July/83

For Orders.

It will be seen from
the correspondence quoted
above that a difficulty
has arisen as to the
power of Mr. Brown to
convey to Government, with
an unimpeachable title,
the premises at Vytteri
occupied as a Telegraph
office, the purchase of

which was sanctioned in
G.O. 553 W of 3rd February 1883.

2. The Executive
Engineer has, it is re-
ported, already paid to
Mr. Brown the purchase
money of the building and has raised
the question for consideration before the
now is whether a suit
shall be instituted to
compel Mr. Brown to
give Government a good
title, or the property taken
up under the Land ac-
quisition act.

3. But before either
of these courses is adopted,
the Government Solicitor
suggests that Mr. Brown be asked for a specific
reply to the following
question asked in letter
from this office No 172 E
of 21st June
viz. whether he will

There can I think
be asked for a specific
reply to the following
question asked in letter
from this office No 172 E
of 21st June
viz. whether he will

2364
34

accept, as compensation, the
sum already paid to him
as the price of the proper-
ty, if it is taken up
on behalf of Government
under the Land acqui-
sition act.

C. M. Mackay
Major General
Secretary to Govt. P.W.D.

21 July 1883.

The Hon. H. E. S. S. S.

The Hon. S. J. Carmichael

Public Works Department. No 2364 W

Proceedings of the Madras Government,
Under date the 22nd Aug^r 1883.

Read the following.

Letter from S. E. South Coast (No. 229 W of June 7th 1883)

Memorandum to Govt Solicitor (" " 163 E of " 15th ")

Letter from the do (" " 312 of " 19th ")

do to H. W. Brown Esq (" " 192 E of " 21st ")

do from do (" " of July 5th ")

Endorsement to Govt Solicitor (" " 215 E of " 10th ")

Letter from do (" " 348 of " 11th ")

do to H. W. Brown Esq (" " 243 E of " 24th ")

do from do (" " of 12 Aug^r ")

No 243 E of July 24th

The papers will be
referred for the opinion
of the Advocate General

Recd 24/7 R 25/7

Acc 20/7 R 23/7

as to the course which
the Government should
take under the cir-
-cumstances.

Att

15/8/83

To,

The Government Solicitor

L.S.
1883

236
36

5239
58/3
6128
1888

Govt. of (1883) Madras.

PUBLIC WORKS.

A. C. P. T. K.

23/8

22 Aug 1883 No 2364

Nos.

Messrs Brown & Co's
Property at Vaytri

Papers ^{on the subject of the}
Purchase of
referred to the
House of