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Tamil Nadu Archives

Government Of Tamil Nad

P. W. Department

G.O. No: 2093 W

Dated: 7.9.1885

J.

7th September 1885, No. 2093 W., Public Works.

2093

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

Read—the following papers:—

Letter from the Superintending Engineer, IV Circle, dated 4th August 1883, No. 322.
„ „ „ „ „ „ 7th May 1884, No. 217 E.W.
„ „ „ „ „ „ 10th „ „ „ 246 C.-E.W.

From E. BARCLAY, Esq., Government Solicitor, to the Executive Engineer, Nilgiri Division, dated Madras, 5th May 1884, No. 250.

In reply to your letter of 1st instant, I beg to inform you that no suit has yet been filed against Mr. Brown, and I hope that no suit will be necessary. The matter is a complicated one, and I am in communication with Mr. Brown's legal adviser on the subject, and I hope eventually to be able to make out in Mr. Brown such a title to the property bought from him by Government as I can advise Government to accept.

Endorsement on the above.

No. 227 E.W.

Forwarded to the Chief Engineer, Public Works Department, for information, with referance to this office letter, No. 217, of 7th instant.

(Signed) J. BEATTY, Colonel, R.E.,
Suptg. Engineer, IV Circle.

Ootacamund,
5th May 1884.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 14th October 1884, No. 541.

I beg to acknowledge receipt of your memorandum, dated 10th instant, No. 747 E.

2. After very considerable difficulty I prepared, in consultation with the Advocate-General, such a conveyance of the property at Vayitri sold by Mr. Brown to Government as we could advise Government to accept. A fair draft of this conveyance which, from the state of the title, is somewhat long, was sent by me on the 15th August last to Mr. Rosario, Mr. Brown's legal adviser at Tellicherry, for approval; and, at the same time, I requested Mr. Rosario to send me for perusal a reconveyance of the Pookote estate (part of which is the land sold to Government) from a Dr. Henderson, to whom I had learnt that the estate had been mortgaged to Mr. Brown. On the 1st September I received from Mr. Rosario a reconveyance not from Dr. Henderson, but from his executors, Dr. Henderson having died, and on the 2nd idem I wrote to Mr. Rosario inquiring whether Dr. Henderson's will was proved by either of the executors (Mr. Ferguson and Mr. Mitchell), and, if so, in what court, as no mention was made in the reconveyance of any probate, and requesting, if the will was proved, that I might be allowed to see the probate. To this letter I have as yet received no

reply, but I am writing again to Mr. Rosario, and if the question about probate of Dr. Henderson's will is satisfactorily answered, I have every hope that this long-pending matter will shortly be settled.

From the same officer, dated Madras, 24th April 1885, No. 146.

I beg to acknowledge receipt of your memorandum, dated 18th instant, No. 12 E.

2. Since my letter, dated 14th October last, No. 541, I have been endeavouring to have the conveyance of the property at Vayitri, sold by Mr. Brown to Government, completed; but, I regret to say, so far without success.

3. On the 14th October last I wrote to Mr. Brown's legal adviser at Tellicherry, calling his attention to the matter, and informing him that I could not allow it to remain in abeyance any longer. On the 23rd idem I wrote to Messrs. Oakes and Company, informing them of the purchase by Government of this property, which was included in a mortgage to them by Mr. Brown, that I had prepared a conveyance of the property and had sent it to Mr. Brown's legal adviser for approval, but could get no reply from him.

4. On the 10th November last, Messrs. Oakes and Company wrote requesting me to take notice that the purchase-money of any property mortgaged to them, which might have been sold by Mr. Brown to Government, was to be paid to them direct, and that as Mr. Brown could not dispose of any portion without their joining in the conveyance, they presumed I would inform them when the deeds had to be executed and the money paid. In reply, I had to inform Messrs. Oakes and Company that Government had already paid the purchase-money to Mr. Brown.

5. On the 13th November I received back the draft conveyance from Mr. Brown's legal adviser, approved by him, subject to the omission of a recital therein that Messrs. Oakes and Company's mortgage had been paid off. This recital had been inserted as I was under the impression that the mortgage had been paid off.

6. On the 14th November I forwarded the draft conveyance to Messrs. Oakes and Company for approval, with an inquiry whether it would be executed when engrossed. In reply, Messrs. Oakes and Company informed me the next day that the deed would be executed on payment of the purchase-money to them as mortgagees. On the 17th November I wrote to Messrs. Oakes and Company that Mr. Dawson in his own right and as executor of Mr. James Oakes and the Administrator-General as executor of Mr. W. T. S. Oakes were the necessary parties to the deed, and that as Government had already paid the purchase-money to Mr. Brown, I trusted that Mr. Dawson would not insist upon the position he had taken up. On the same day I also wrote to Mr. Brown's legal adviser, informing him that I had altered the deed as requested by him and of the correspondence which had passed between myself and Messrs. Oakes and Company, and inquiring whether Mr. Brown was prepared to pay Messrs. Oakes and Company the purchase-money he received from Government, so that the matter might be completed.

7. On the 18th November I received a letter from Messrs. Oakes and Company, informing me that the interest in the property of Mr. W. T. S. Oakes and Mr. James Oakes had, under their partnership arrangements, become vested in the present firm, and that the executors of Mr. W. T. S. Oakes and Mr. James Oakes were not entitled to receive any portion of the debt due by Mr. Brown, but would, at the firm's request, sign any deeds necessary for the realisation of the property, and that it was out of the question to expect that the firm could permit the alienation of any portion of the security mortgaged unless the value was paid to them direct.

8. Having received no reply to my letter of 17th November to Mr. Brown's legal adviser, I wrote to him again on the 16th January last calling attention to the matter, but I have received no reply from him.

9. I have seen Mr. Dawson about this matter on several occasions since the beginning of the year. He informed me that Mr. Brown had been very ill, and I requested Mr. Dawson, who is a personal friend of Mr. Brown, to see whether some

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arrangement could not be made regarding the payment of the purchase-money by Mr. Brown to Messrs. Oakes and Company. I have reason to believe that Mr. Dawson did attempt to make such an arrangement as my firm has recently heard twice from Mr. Brown regarding moneys coming to a person indebted to him, but my firm was not in a position to furnish the information asked for. I understand from Mr. Dawson that Mr. Brown is in poor circumstances.

10. My difficulties in taking proceedings to compel the completion of the conveyance are—(1) that such proceedings will have to be taken up-country, and (2) that Messrs. Oakes and Company, Mr. Dawson as executor of Mr. James Oakes, and the Administrator-General as executor of Mr. W. T. S. Oakes will all have to be joined in such proceedings. If, however, Government are prepared to give up possession of the property, Mr. Brown might be sued for a refund of the purchase-money, though he will probably be entitled to deduct therefrom a reasonable amount as rent during the occupation of the premises by Government, unless Government can show that they have sustained damages to an equal or greater amount than such rent.

No. 39 E.

Referred to the Superintending Engineer, IV Circle, for early remarks on the suggestion (paragraph 10) of the Government Solicitor to sue Mr. Brown for the purchase-money, possession of the property being given up.

Ootacamund,
28th April 1885.

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

From Colonel J. BEATTY, R.E., Superintending Engineer, IV Circle, to the Chief Engineer, Public Works Department, dated Coimbatore, 18th May 1885, No. 204 E.W.

As directed in G.O., No. 39 E., of 28th ultimo (herewith returned), I have the honor to report that I see no objection to the course proposed by the Government Solicitor, and to request permission to hand the building back to Mr. Brown.

2. The building is now in temporary charge of the Deputy Collector, who provides a caretaker, and it may be at once handed over to Mr. Brown.

From the same Officer, dated Ootacamund, 12th June 1885, No. 235 E.W.

In reply to your memorandum, No. 216 E., of 11th June 1885, I have the honor to inform you that the house purchased from Mr. Brown for a Telegraph office was only occupied by that department for a few months, and on the amalgamation of the Postal and Telegraph departments, the Telegraph office of Vayitri was transferred to the Post office, where it now is.

2. Hitherto the Deputy Collector has provided a watchman and made occasional use of the building on his visits to Vayitri; but as he is unwilling to pay the usual rent, I requested him to vacate * it, and would propose utilising it in future for the storage of tools. I understand there is a large number of famine tools in North Wynaad, which the Revenue Department desire to hand over.

From the same officer, dated Coimbatore, 22nd June 1885, No. 252 E.W.

In reply to your memorandum, No. 246 E., of 18th instant, I have the honor to inform you that the house at Vayitri, purchased from Mr. Brown, if not applied to the storage of tools, may best be utilised as quarters for subordinates employed in the Wynaad roads sub-division.

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* I have just learnt that it was vacated from 1st instant.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 7th July 1885, No. 234.

In reply to your memorandum of the 1st instant, No. 217 E., I beg to inform you that on receipt of your memorandum of the 11th June last of same number, I wrote to Messrs. Oakes and Company requesting them to let me know, if they had no objection, for the information of Government, the amount due to them on Mr. Brown's mortgage in their favor of the Pookote estate. Messrs. Oakes and Company have not yet replied to my letter.

2. In September 1873, Mr. Brown mortgaged to the then partners of the firm of Messrs. Oakes and Company his undivided half part or share in the Pookote estate to secure the balance of his account with the firm. This mortgage was stamped to cover Rs. 10,000; but I believe there is a much larger sum than that due to Messrs. Oakes and Company and secured by this and another mortgage. It is extremely unlikely, therefore, that Messrs. Oakes and Company would accept less than Rs. 10,000 to clear off the mortgage on the Pookote estate. But it must be borne in mind that it is only a comparatively small portion of the estate which Mr. Brown sold to Government, and it would therefore hardly do for Government to pay, not only the purchase-money paid to Mr. Brown, but also to pay off the mortgage, and only to secure a portion of the mortgaged property.

3. I have no reason to believe that there are other incumbrances on the property; but, to ascertain this positively, I shall have to employ some one in the Wynaad to search the registers there for incumbrances. I have thought it better not to go to this expense until I hear from Government that they are prepared to pay off such incumbrances as there may be, which, under the circumstances, I think is hardly likely.

4. I am writing again to Messrs. Oakes and Company for the information required, but unless Government are prepared to pay off Messrs. Oakes and Company's claim on the estate, I think the only course will be, if Government wish to retain the land they bought, to take it up under the Land Acquisition Act, and let Mr. Brown take such steps as he may think fit to recover the value fixed by the Collector. It would be as well, however, to refer the matter again to the Advocate-General before taking this step.

Letter from the Government Solicitor, dated 13th August 1885, No. 307.
" " " " " 28th " " " 336.

ORDER—dated 7th September 1885, No. 2093 W., Public Works.

In Proceedings, dated 3rd February 1883, No. 383 W., the Government sanctioned the purchase, for Rs. 4,500, of a house at Vayitri from a Mr. H. W. Brown.

2. After the purchase-money had been paid, and the building taken over, the Government Solicitor found that the title was in an unsatisfactory state; and, on the Advocate-General's opinion, printed with Proceedings, dated 11th October 1883, No. 2857 W., the Government authorised the institution of a suit against Mr. Brown to compel him to convey the property to Government with a good title.

3. Subsequently, however, the Government Solicitor endeavoured to obviate the necessity for legal proceedings by preparing, in communication with Mr. Brown's legal adviser, such a conveyance of the property as he could advise the Government to accept; but the difficulties in accomplishing this proved insuperable, and, as a last resource, the Government Solicitor, in his letter, No. 146, dated 24th April 1885, suggested that the property be handed back to Mr. Brown, and that a suit be filed to compel that gentleman to refund the purchase-money.

4. On further advice, the Government now resolve to direct the Superintending Engineer to take the necessary steps, in communication with the Collector, to put into force the provisions of the Land Acquisition Act, and thus to secure to the Government an unquestionable title to the property. As, however, the adoption of this course will involve the payment of the compensation awarded under the Act to the persons found to be entitled thereto, the Superintending Engineer will further, in communication with the Government Solicitor, institute a suit against Mr. Brown, to compel him to refund the purchase-money, and the amount of the damages resulting to Government.

5. The house, on its formal acquisition, may be utilised as quarters for the subordinates employed on the Wynaad road improvements.

(True Extract.)

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

To the Superintending Engineer, IV Circle, with manuscript copy of the Advocate-General's opinion.
" Examiner, Public Works Accounts.
" Government Solicitor.

Exd. J. Henricus.
Spare Copies

BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of {1885} Madras.

PUBLIC WORKS.

Dated September, 7th.

Recd. *Encl.*

G.O., 7th Sept. 1885, No. 2093 W.

SEPTEMBER.

Mr. Brown's Property at Vayitri

Orders issued for acquiring — under the provisions of the Land Acquisition Act and for instituting a suit against Mr. Brown for refund of the purchase-money.

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GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

No. 40.

Read—the following letter from Colonel J. BEATTY, R.E., Superintending Engineer, Fourth Circle, to the Chief Engineer, Public Works Department, dated Coimbatore, 1st February 1883, No. 47 :—

With reference to G.O., No. 1453 W., of 10th June 1882, I have the honor to report that the building therein referred to, Messrs. Hinde and Company's, was inspected and pronounced unsuitable * for the Vayitri Telegraph office and two other buildings have since been under consideration, viz., a house belonging to the Basel Mission Establishment and Messrs. Brown and Company's property.

Two tracings.
Four letters.

* *Vide* Superintendent's letter, No. 2062, of 23rd November 1882.

2. The Mission house was priced at Rs. 2,500, and was inspected by Mr. Trail, the Executive Engineer, in company with Mr. Gosselin, the "Chief Superintendent of Telegraphs in charge Construction." These officers rejected it on the ground of insufficient accommodation and the walls being honeycombed with white-ants.

3. They also inspected Messrs. Brown and Company's property and pronounced it in "every way the most suitable building." Mr. Trail valued the building at Rs. 3,627, and Mr. Gosselin considered the arrangement of the rooms suitable, and that he "could establish an office there in ten minutes."

4. Mr. Trail was mistaken in supposing that the owner was willing to part with it for Rs. 3,500, his price having been Rs. 4,500, as will be seen from the accompanying copy of his original offer of 6th November.

5. The property consists of a house and godowns with three acres of land, and Messrs. Brown are reported to be willing to make petty repairs, and the place is considered in every way suitable and ready for occupation.

6. The Chief Superintendent of Telegraphs is urgent to have the matter arranged, as the telegraph line has been completed to Vayitri.

7. The submission of this application has been delayed by want of the plans † promised in Mr. Trail's report, and in order to obtain Mr. Gosselin's opinion ‡ on that report.

† Herewith sent.
‡ *Vide* his letter, No. 24, of 16th January 1883.

8. In your No. 2047 C. of 11th November 1882 I was directed to submit a complete estimate, including any additions considered necessary. In my letter, No. 461, of 14th November 1882, I asked Mr. Gosselin's opinion on Messrs. Brown's property, and whether any additions or improvements were considered necessary, and I understand from his reply of 16th January that he is satisfied with the building as it stands.

9. As Messrs. Brown's property appears to be the only *suitable* building available, ready for occupation, and approved by the Telegraph Department, I request permis-

sion to complete the purchase, and have telegraphed to the Chief Superintendent of Telegraphs that he may arrange to occupy the property at once, conditionally on sanction of Government being given.

No. 41.

ORDER—dated 3rd February 1883, No. 383 W., Public Works.

The Superintending Engineer is authorised to complete the purchase of Messrs. Brown and Company's house for Rs. 4,500, an appropriation of this sum being now made for the purpose from the Provincial Reserve.

2. It is necessary that a formal valuation estimate should be submitted for sanction, and this should be done as soon as possible.

(True Extract.)

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Govt., P.W.D.

To the Superintending Engineer, Fourth Circle.
„ Examiner, Public Works Accounts.
„ Superintendent of Telegraphs, Malabar Division.
„ Public Department.

Exd. A. F. Goodall.
Spare Copies

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BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of (1883) Madras.

PUBLIC WORKS.

Dated February, 3rd.

Recd. *Encl.*

G.O., 3rd Feb. 1883, No. 383 W.

FEBRUARY.
Nos. 40-41.

Telegraph Office at Vayitri.

Sanctioning the purchase of Messrs. Brown and Company's house for the —.

22nd August 1883, No. 2364 W., Public Works.

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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. 383 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.

Letter from Government Solicitor, with two enclosures.

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, for 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 3 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 and Mr. H. R. Dawson as mortgagees	Of one-fourth.

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 th[illegible]ltest idea that you intended inspecting more than the original lease, I would have declined [illegible]owing 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.

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

26th May 1883.

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.

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

16th June 1883.

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.

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

10th July 1883.
To the Government Solicitor.

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.
William Elsam, two-tenths.
George Turner, one-tenth.
A. B. Sturdee, one-tenth.
J. C. Ibbs, 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 Pocket" 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 "Pokoote" 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 and James Oakes, deceased, and Mr. H. R. Dawson as mortgagees } of one-fourth.
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.)

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Govt., P.W.D.

To the Government Solicitor.

Exd. A. F. Goodall and A. F. Aaron.
Spare Copies

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.

11TH OCTOBER 1883, NO. 2857 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

READ—the following papers :—

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 1st September 1883, No. 464; forwarding the following Opinion of the Advocate-General :—

OPINION.

I think the vendor, Mr. Brown, is bound to make a good title to the property at Vayitri, for which he received Rs. 4,500, or to refund the purchase-money, less a fair sum for use and occupation; but the plaintiff in the suit will have to undertake to restore the building to the condition in which it was at the time the possession passed from the vendor.

It would be well to ascertain from the officer who conducted the negotiation for the purchase of the property whether anything was said or written which would lead Mr. Brown to suppose that the ordinary inquiry as to title would be dispensed with. I infer from the facts disclosed that nothing was said or written which would relieve the vendor from his legal obligations.

From the attitude taken by Mr. Brown there seems to be no course open except to bring a suit against him, and I accordingly advise that a suit be instituted without any unnecessary delay after notice to him.

31st August 1883. (Signed) P. O'SULLIVAN,
Advocate-General.

No. 1666 C., Public Works.

Referred, with a copy of G.O., No. 2364 W., dated 22nd August 1883, to the Superintending Engineer, Fourth Circle, who will report as soon as possible whether, when the negotiations for the purchase of the property was pending, anything was said or written which would lead Mr. Brown to suppose that the ordinary inquiry as to title would be dispensed with.

(By Order.)
6th September 1883. (Signed) C. BOWEN, Major, R.E.,
Under Secy. to Govt., P.W.D.

From Colonel J. BEATTY, R.E., Superintending Engineer, Fourth Circle, to the Chief Engineer, Public Works Department, dated Coimbatore, 20th September 1883, No. 399.

I have the honor to return the enclosure of your docket, No. 1666 C., of 6th instant, with copies of the correspondence between the Executive Engineer, Nílgiris, and Messrs. Brown and Co., of Pookote, regarding the purchase by Government of their property at Vayitri.

2. It does not appear to me that anything was said or written by the Executive Engineer which could have led Messrs. Brown to suppose that the ordinary inquiry as to title would be dispensed with.

3. So far as this office is informed, no alterations have been made in the building since it was occupied by the Telegraph Department, so that it is only necessary for the Telegraph Department to find temporary accommodation elsewhere in the neighbourhood and hand it back to the vendor.

Enclosures.

From J. C. LARMINIE, Esq., Executive Engineer, Nilgiri Division, to Messrs. BROWN and Co., Pookote, dated Ootacamund, 9th February 1883, No. 521.

With reference to your letter of the 6th November 1882 to the Superintending Engineer, Fourth Circle, I have the honor to inform you that the purchase of your property will be made on the terms on which you offered it on the execution of the petty repairs as promised. In the meantime the Collector of Malabar has been communicated with with a view to a formal transfer of the property.

From H. W. BROWN, Esq., to the Executive Engineer, Nilgiri Division, dated Pookote, 4th March 1883.

I duly received your letter, dated 9th ultimo, No. 521, informing me that my offer of my house for the Telegraph Office, Vayitri, was accepted on the terms mentioned in my letter of the 6th November last, and that the Collector of Malabar had been communicated with with a view to the formal transfer of the property.

On the 21st ultimo I wrote the Collector of Malabar informing him I was quite ready to execute the formal transfer. His reply (copy enclosed) refers me back to you. May I therefore beg the favor of your sending me a draft of the transfer for me to fill in any necessary particulars and return to you for completion.

P.S.—Hitherto the correspondence has been carried on by me as Brown and Co., as I am trading under that name. H. W. Brown and Brown and Co. are one and the same.

From the Collector of Malabar, to H. W. BROWN, Esq., Vayitri, dated Calicut, 1st March 1883, No. 794.

In reply to your letter of the 21st ultimo, stating that you are now prepared to execute the formal transfer of your house at Vayitri to the Telegraph Department, I have the honor to inform you that I have nothing to do with the matter except to report whether there exists any objection to its purchase by Government, which I have already done, and to refer you to the Public Works Department as regards its transfer.

From J. C. LARMINIE, Esq., Executive Engineer, Nilgiri Division, to Messrs. BROWN and Co., Vayitri, dated Ootacamund, 13th March 1883, No. 605.

With reference to your letter of the 4th March 1883, I have the honor to request that you will be good enough to forward, by return post, if possible, the title-deed of the property offered by you for sale; also a survey of the land, if you have one.

From H. W. BROWN, Esq., Vayitri, to the Executive Engineer, Nilgiri Division, dated South Wynaad, 17th March 1883.

In reply to your letter, No. 605, of the 13th instant, I have the honor to inform you there is no separate title-deed of the property purchased from me for the Telegraph Office, Vayitri, inasmuch as I built the house myself on land held by myself and another under a lease for 99 years from the 18th May 1845 and in my possession for the last 24 years.

The land sold with the house is about 3 acres, and is bounded on all sides by land in my possession. A plan of it shall be sent to you within a week from date.

I enclose a memorandum giving particulars of title, &c., of the property.

From E. BARCLAY, Esq., Government Solicitor, to the Executive Engineer, Nilgiri Division, dated Madras, 22nd March 1883, No. 168.

I beg to acknowledge receipt of your letter of the 20th instant, No. 633, to the address of my firm, with its enclosure.

2. To enable me to prepare the assignment to Government of the property to which your letter refers, I must ask you to obtain and send me the original lease of the property to Mr. Glasson, and any other title-deeds relating to it there may be. I have to examine the title of all property purchased by Government, and in this case it will be necessary to recite the lease in the assignment to Government.

3. I shall also be obliged by your ascertaining from Mr. Brown whether he holds any power of attorney from Mrs. Brown, in whose name jointly with that of Mr. Brown the property apparently stands authorising him to execute the assignment on behalf of Mrs. Brown. If Mr. Brown has such a power of attorney, I would be glad to inspect it.

From J. C. LARMINIE, Esq., Executive Engineer, Nilgiri Division, to Messrs. BROWN and Co., Vayitri, dated Ootacamund, 26th March 1883, No. 637.

With request to be good enough to forward the papers required by the Government Solicitor, if possible; as also to furnish the information regarding the power of attorney alluded to in paragraph 3.

Papers required have been this day sent to the Government Solicitor, Madras.

Vayitri,
31st March 1883.

(Signed) H. W. BROWN.

From H. W. BROWN, Esq. Vayitri, to the Executive Engineer, Nilgiri Division, dated South Wynaad, 28th March 1883.

I have the honor to inform you that I have this day sent you, by book post, a plan of the premises sold to Government for the Telegraph Office, Vayitri. This will, I trust, enable you to complete the transaction. On receipt of transfer with a cheque for the amount (Rs. 4,500), I will execute register and return same to you with as little delay as possible.

From J. C. LARMINIE, Esq., Executive Engineer, Nilgiri Division, to H. W. BROWN, Esq., Pookote, dated Ootacamund, 31st March 1883, No. 660.

With reference to this office endorsement, No. 637, dated 26th instant, and your letter of 28th idem, I have the honor to enclose a cheque, No. 28 W, for Rs. 4,500, being the purchase-money of your property sold to Government for the Telegraph Office at Vayitri, and request that the accompanying receipt may be stamped, signed and returned.

From Messrs. BROWN and Co., Pookote, to the Superintending Engineer, Fourth Circle, dated Vayitri, 6th November 1882.

To your letter, No. 695, we have the honor to reply as follows:—

1. We have the house, godown, stable, &c., you refer to, and are willing to dispose of same for the sum of Rs. (4,500) four thousand five hundred.

2. The house is well built, stone foundation, and basement wooden superstructure, and mission tile roof, size 48′ × 32′, containing a sitting-room, two bed-rooms, two bath-rooms, one dressing-room, one office and store room; back and front verandahs, latter enclosed; fire-place and chimney in sitting-room and one bed-room; part of floor is asphalte and the rest cement.

3. The cook-room and godown measure about 30′ × 12′, and is built of wood with mission tile roof.

The stable, also of wood and mission tile roof, has a lean-to room at each end for horsekeeper, and room for four horses.

The compound or land attached is about 3 acres in extent.

The right of drawing water from our lake or any other more convenient source is included.

No. 410.

Forwarded to the Chief Engineer, Public Works Department, with reference to his memorandum, No. 403 E., dated 27th September 1883.

29th September 1883.

(Signed) J. BEATTY, Colonel, R.E.,
Superintending Engineer, Fourth Circle.

Order—dated 11th October 1883, No. 2857 W., Public Works.

The Government Solicitor is requested to take the necessary steps for instituting a suit against Mr. Brown, as suggested by the Advocate-General.

(True Extract.)

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

To the Government Solicitor.
" Superintending Engineer, Fourth Circle.
" Examiner, Public Works Accounts.

Exd. A. F. Goodall.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of (1883) Madras.

PUBLIC WORKS.

Dated October, 11th.

Recd. *Encl.*

G.O., 11th Oct. 1883, No. 2857 W.

OCTOBER.

Mr. Brown

The Government Solicitor to take steps for instituting a suit against — to compel him either to give a good title for, or to refund the purchase-money of, his property at Vayitri.

No. 322/E.W.

Supg Engineer's Office 4th Circle
Coimbatore, 4th August 1883

3022/13

From

The Supg Engineer
4th Circle

To,

The Chief Engineer
P.W. Department

Sir.

Enclosures 2
Abstract.
Estimate.

With reference to your Memo: No. 2047 C of 11th November 1882 and para 2 of G.O. No. 383 W. of 3rd February 1883 I have the honor to submit herewith a complete estimate of the Vythery Telegraph office, including certain petty improvements and additions considered necessary by the Telegraph Department. The purchase money was Rs 4500, the improvements are estimated at 370 Rupees, making a total of Rs: 4870.

I have the honor to be
Sir
Your most obedt Servant
R Beatty Col R.E.
Supg Engineer 4th Circle

JH

No 383 W. 3.2.83.
" 2047 C. 11.11.82.

From

The Supg. Engineer,
Fourth Circle.

No 2093 W Dy 7-7-85

Dated 4th August /83.
Despd. —Do—

No 322.

Enc. 2

Vythiri Telegraph Office:— Submitting a complete Estimate for the—

Cir 16/8
Fr 13.8
Ooty 9/8

Supg. Engineer's Office, 4th Circle.
Camp Ootacamund, 7th May /84.

No 217
E.W

2093
14

From

The Superintending Engineer,
Fourth Circle.

To

The Chief Engineer,
P.W. Department.

Sir,

In reply to your Memorandum No 29 E of 19th ultimo, I have the honor to inform you that the Government Solicitor stated in his letter No 608 of 19th November 1883 to the address of the Executive Engineer that he had arranged with Mr Gantz — Barrister of Calicut to file a suit against Mr Brown. Nothing further having been heard of the matter, the Government Solicitor has now been requested to report the progress made, and when he expects the matter will be settled.

I

I have the honor to be,
Sir,
Your most obed^t. servant.

J. Beatty - Col. R.E.,
Sup^t. Engineers, 4^th Circle.

2093/15

FWk 2022

From

The Superintending Engineer,
IV Circle

(1)

Dated 7th May, 1884

No. 217/E/W

Rc. 2093 W Sep 7-1-85

Enclo: - Nil -

Suit against Mr. Brown

Reports that Mr. Gantz Barrister at Calicut has been instructed by Government Solicitor to file a — and that its result will be reported.

C. 13-5-84

Supdg. Engineers' Office, 4th Circle.
Camp Ootacamund 10th May 1884.

No. 2460/I.W.

2093/10

From

The Superintending Engineer,
Fourth Circle.

To

The Chief Engineer,
I. W. Department.

Genl
To be registered
Please see S.O's
remarks of 16-4-84
attached to No 2926
N.E.

Sir,

In reply to your reminder just received, I have the honor to inform you, as I have already reported, that the Government Solicitor placed the suit[×] in the hands of Mr. Gantz, Barrister at Calicut; and nothing further having been heard of it, a reminder was sent to the Government Solicitor whose reply will be communicated to you, so soon as it is received.

[×] against Mr. Brown of Pookote.

I have the honor to be,
Sir,
Your most obedt. servant,
L. Beatty - Col., R.E.,
Supdg. Engineer 4th circle

2093
17

B. ch. 4235 / A

From

The Supg. Engineer,
Fourth circle.

12 MAY 84

To

The Chief Engineer,
P. W. Department

No. 2093 d/ 7-7-85

Dated 10th
Despd. } May 1884.

No. 246 C / E.W.

Suit against Mr Brown of Pookote Vayitri:-

Reporting in regard to the —

No. 250

Madras, 5th May 1884

DP 93 / 18

From

Earnest Barclay
Government Solicitor,
Madras.

To

The Executive Engineer,
Nilgiri Division.

Sir,

In reply to your letter of 1st Instant, I beg to inform you that no suit has yet been filed against Mr Brown, and I hope that no suit will be necessary. The matter is a complicated one, and I am in communication with Mr Brown's legal adviser on the subject, and I hope eventually to be able to make out in Mr Brown such a title to the property bought from him by Government as I can advise Government to accept.

I am &c.
(signed) Earnest Barclay
Government Solicitor.

True

W.A.S. 34/5.

(True Copy) No. $\frac{227}{E.W.}$

Forwarded to the Chief Engineer, P. W. Department for information with reference to this Office letter No. 217 of 7th instant.

T. Beatty Colonel, R.E.,
Supg: Engineer, 4th Circle.

Camp Ooty
15th May 184

To

The Chief Engineer,
P. W. Department.

W. 4227

From
The Superintending Engineer
IV Circle

Dated 15th May 1884

No. 227
C. W.

Enclosure - Nil -

No. 2093 W. 7-9-85

Suit against Mr. Brown.

Forwards for information Copy of letter from the Government Solicitor on the subject of ———

W.
23-5-84

C.L.S. 58/5.
C. 20-5-84

No. 541.

Madras 14th October 1884.

From. Ernest Barclay
Government Solicitor
Madras.

To. The Secretary to Government
Public Works Department
Ootacamund

2093/28

Sir,

1. I beg to acknowledge receipt of your Memorandum dated 10th instant No. 747 E.

2. After very considerable difficulty I prepared in consultation with the Advocate General such a conveyance of the property at Vayitri sold by Mr Brown to Government ~~such~~ as we could advise Government to accept. A fair draft of this conveyance which, from the state of the title, is somewhat long, was sent by me on the 15th August last to Mr Rosario Mr Brown's legal adviser at Tellichery for approval, and, at the same time, I requested Mr Rosario to send me for perusal a reconveyance of the Pookode Estate (part of which is the land sold to Government) from a Dr Henderson, to whom I had learnt that the Estate had been mortgaged, to Mr Brown. On the 1st September I received from Mr Rosario a reconveyance not from Dr Henderson, but from his Executors, Dr Henderson having died, and on the 2nd idem I wrote Mr Rosario enquiring whether Dr Henderson's Will was proved by either of the Executors (Mr Ferguson & Mr Mitchell) and if so in what Court, as no mention was made in the Reconveyance of any Probate, and requesting if the

Will, was proved that I might be allowed to see the Probate. To this letter I have as yet received no reply but I am writing again to Mr Rosario, and if the question about Probate of Dr Henderson's Will is satisfactorily answered, I have every hope that this long pending matter will shortly be settled.

I am, Sir
Your Obedient Servant

Ernest Barclay

Government Solicitor

2093/211

(61)

No. 2047 C d/ 11.11.82
" 383 W d/ 3.2.83
" 2361 W d/ 22.8.83
" 2857 W d/ 11.10.83
" 3140 W d/ 6.11.83
" 29 E d/ 19.4.84
" 747 E d/ 10.10.84

Complete
D.P.
10/10/85

16 OCT 84

No. 12 E d/ April 18th 85

No. 2093 W 7-9-85

Await report from the Solicitor.

16.10.84

(13)

D.L.S 50/10 of 1884

2093
22

P 4

No. 146.

Madras 24th April 1885.

From
Ernest Barclay
Government Solicitor
Madras.

To
The Secretary to Government
Public Works Department
Ootacamund

Sir

1. I beg to acknowledge receipt of your Memorandum dated 18th instant No. 12 E.

2. Since my letter dated 14th October last No. 541 I have been endeavouring to have the conveyance of the property at Vayitri sold by Mr. Brown to Government completed but I regret to say so far without success.

3. On the 14th October last I wrote to Mr. Brown's legal adviser at Tellicherry calling his attention to the matter and informing him that I could not allow it to remain in abeyance any longer. On the 23rd idem

9

Supg: Engineer, IV Circle

I wrote Messieurs Oakes and Company informing them of the purchase by Government of this property which was included in a Mortgage to them by Mr Brown that I had prepared a Conveyance of the property and had sent it to Mr Brown's legal adviser for approval but could get no reply from him.

4. On the 10th November last Messrs Oakes & Co. wrote requesting me to take notice that the purchase money of any property mortgaged to them which might have been sold by Mr Brown to Government was to be paid to them direct and that as Mr Brown could not dispose of any portion without their joining in the Conveyance they presumed I would inform them when the deeds had to be executed and the money paid. In reply I had to inform Messieurs Oakes and Co. that Government had already paid the purchase money to Mr Brown.

5. On the 13th November I received back

back the draft Conveyance from Mr Brown's legal adviser approved by him subject to the omission of a recital therein that Messieurs Oakes and Co. Mortgage had been paid off. This recital had been inserted as I was under the impression that the Mortgage had been paid off.

6. On the 14th November I forwarded the draft Conveyance to Messieurs Oakes and Co. for approval with an enquiry whether it would be executed when engrossed. In reply Messieurs Oakes and Co. informed me the next day that the deed would be executed on payment of the purchase money to them as Mortgagees. On the 17th November I wrote Messieurs Oakes and Co. that Mr Dawson in his own right and as executor of Mr James Oakes and the Administrator General as executor of Mr W. T. S. Oakes were the

necessary parties to the deed and that as Government had already paid the purchase money to Mr. Brown, I trusted that Mr. Dawson would not insist upon the position he had taken up. On the same day I also wrote to Mr. Brown's legal adviser informing him that I had altered the deed as requested by him and of the correspondence which had passed between myself and Messieurs Oakes and Co. and enquiring whether Mr. Brown was prepared to pay Messieurs Oakes and Co. the purchase money he received from Government so that the matter might be completed.

7. On the 18th November I received a letter from Messieurs Oakes and Co. informing me that the interest in the property of Mr. W. T. S. Oakes and Mr. James Oakes had, under their Partnership arrangements become vested in the present firm and that the executors of Mr. W. T. S. Oakes and Mr. James Oakes were not entitled to receive any portion of the debt due by Mr. Brown, but would, at the firm's request, sign any deeds necessary for the realization of the property and that it was out of the question to expect that the firm could permit the alienation of any portion of the security mortgaged unless the value was paid to them direct.

8. Having received no reply to my letter of 17th November to Mr. Brown's legal adviser I wrote to him again on the 16th January last calling attention to the matter but I have received no reply from him.

9. I have seen Mr. Dawson about this matter on several occasions since the beginning of the year. He informed me that Mr. Brown had been very ill and I requested Mr. Dawson who is a personal friend of Mr. Brown to see whether some arrangement could not be made regarding the payment of the purchase money by Mr. Brown to Messrs. Oakes and Co. I have reason to believe that Mr. Dawson did attempt to make such an arrangement as my firm has recently heard twice from Mr. Brown regarding moneys coming to a person

indebted to him, but my firm was not in a position to furnish the information asked for. I understand from Mr. Dawson that Mr. Brown is in poor circumstances.

10. My difficulties in taking proceedings to compel the completion of the conveyance are: 1. that such proceedings will have to be taken up country and 2. that Messrs. Oakes and Co. Mr. Dawson as executor of Mr. James Oakes and the Administrator General as executor of Mr. W. T. S. Oakes will all have to be joined in such proceedings. If however Government are prepared to give up possession of the property Mr. Brown might be sued for a refund of the purchase money though he will probably be entitled to deduct therefrom a reasonable amount as rent during the occupation of the premises by Government unless Government can show that they have sustained damages to an equal or greater amount than such rent.

I am
Sir
Your obedient Servant
Ernest Barclay
Government Solicitor

Supg: Engineer, IV Circle

SUPG. ENGINEER'S OFFICE
No. 388 W
2 MAY. 85
P.W.D.
FOURTH CIRCLE

P.W.C. No. 3806

MAY. 85

27 APL 85

Ootacamund, April 28th 1885.

No. 39 E.

Referred to the Supdg Engineer IV Circle for early remarks on the suggestion (para 10) of the Government Solicitor to sue Mr. Brown for the purchase money, possession of the property being given up.

J. MacStewart
Colonel R.E.
27-4-85
Secretary to Govt, P.W.D.

To,
The Supdg Engineer IV Circle

O.T.S. 90/4 in original to Cent.

No. 2093 W 7-9-85

Referred

No. 204 / E.W.

Supg: Engineer's office IV Circle.
Coimbatore, 18th May 1885.

2093 / W

From,
The Superintending Engineer,
Fourth Circle.

To,
The Chief Engineer,
P.W.D.
Madras.

Sir,

Enclo: 1

As directed in G.O. No. 39 E. of 28th Ultimo, (herewith returned), I have the honor to report that I see no objection to the course proposed by the Government Solicitor, and to request permission to hand the building back to Mr. Brown.

2. The building is now in temporary charge of the Deputy Collector who provides a caretaker and it may be at once handed over to Mr. Brown.

I have the honor to be,
Sir,
Your most obedient servant.

F. Beatty Colonel R.E.
Supg: Engineer, IV Circle.

From Inch 4832

The Supg. Engineer
Fourth circle.

20 MY 85

No. 2093 Way 7-7-85

Dated 18/6/85
[illegible]

No. 204
E.W.

Encls: +

Brown's Property,
Vayitri:—

states that he sees no objection to the course proposed by the Government which & requests permission to hand over — to the owner.

P.W.S. 103/5.

---

p. 9

No. 235
E.W.

Supg. Engineer's Office IV Circle
Camp Ootacamund 12th June 1885.

2093
27

From
The Superintending Engineer
IV Circle

To
The Chief Engineer
P. W. Department.

Sir,

In reply to your Memo: No. 216 E. of 11th June 1885. I have the honor to inform you that the house purchased from Mr. Brown for a Telegraph Office was only occupied by that Department for a few months, and on the amalgamation of the Postal and Telegraph Departments the Telegraph Office of Vayitri was transferred to the Post Office, where it now is.

2. Hitherto the Deputy Collector has provided a watchman and made occasional use of the building on his visits to Vayitri, but as he is unwilling to pay the usual rent, I requested him to vacate × it, and would propose utilizing it in future for the storage of tools. I understand there

× I have just learnt that it was vacated from 1st inst.

there is a large number of famine tools in North Wynaad which the Revenue Department desire to hand over.

I have the honor to be,
Sir,
Your most obedt. Servt.,

J. Beatty - Col. R.E.
Superintending Engineer
IV circle

229/28

No. 2019 C d/ 11-11-82
" 383 W d/ 3-2-83
" 2364 W d/ 22-8-83
" 2569 W d/ 11-10-83
" 3240 W d/ 6-11-83
" 29 E d/ 19-4-84
" 707 E d/ 10-10-84
" 1267 W d/ 1-6-85. Orgl
" 216.7 E d/ 11-6-85

Recd 5310

(15)

From

The Supg. Engineer,
Fourth Circle

Await reply from Govt Solicitor

No. 2023 W d/ 17-9-85

Dated 12th
Desp. 15th } June/85

No. 246 E d/ June 18th 1885

No. 235
E.W.

House purchased from Mr. Brown for Telegraph Office:—

Informs that the was only occupied by that Department for a few months, and on the amalgamation of the Postal and Telegraph departments, the Telegraph office [illegible] transferred to

[illegible]

---

fr 10

No. 252
E.W.

Supg. Engineer's Office IV Circle
Coimbatore 22d June 1885.

2293/29

From

The Superintending Engineer
IV Circle

To

The Chief Engineer
P. W. Department

Sir,

In reply to your Memo: No. 246 E. of 18th inst. I have the honor to inform you that the house at Vayitri purchased from Mr. Brown, if not applied to the Storage of tools, may best be utilized as quarters for Subordinates employed in the Wynaad roads Subdivision.

I have the honor to be,
Sir,
Your most obedt. Servt.

F. Beatty Col: R.E.
Superintending Engineer IV Circle

St

From
The Supg. Engineer,
Fourth Circle.

No. P.W. 1st Afy/185
11/7/85

26 JUN 85

No. 555 E d/ July 11th 1885.

Dated 22nd }
Desp. 23rd } June 1885.

No. 252
Ear.

Rc. 2093 Way 7-9-85

Informs that the house at Vayitri purchased from Mr Brown, if not applied to the storage of Tools, may best be utilized as quarters for subordinates.

D.y.S. 115/6.

No 234.

22/3

N 11

Madras 7th July 1885.

From
Ernest Barclay
Government Solicitor
Madras.

To
The Secretary to Government
Public Works Department
Ootacamund

Sir,

1. In reply to your memo of the 1st instant No 217 E I beg to inform you that on receipt of your Memo of the 11 June last of same number, I wrote to Messrs Oakes & Co requesting them to let me know, if they had no objection, for the information of Government, the amount due to them on Mr. Brown's mortgage in their favour of the Pookote Estate. Messrs Oakes & Co have not yet replied to my letter.

2. In September 1873 Mr Brown mortgaged to the then partners of the firm of Messrs Oakes & Co his undivided half part or share in the Pookote Estate to secure the balance of his account with the firm. This mortgage was stamped to cover Rs 10,000; but, I believe there is a much larger sum than that due to Messrs Oakes & Co and secured by this and another mortgage. It is extremely unlikely therefore that Messrs Oakes & Co would accept less than

Rs: 10000 to clear off the Mortgage on the Pookote Estate. But it must be borne in mind that it is only a comparatively small portion of the Estate which Mr Brown sold to Government, and it would therefore hardly do for Government to pay, not only the purchase money paid to Mr Brown, but, also to pay off the Mortgage; and only to secure a portion of the mortgaged property.

3. I have no reason to believe that there are other incumbrances on the property; but, to ascertain this positively, I shall have to employ some one in the Wynaad to search the registers there for incumbrances. I have thought it better not to go to this expense until I hear from Government that they are prepared to pay off such incumbrances as there may be, which, under the circumstances I think is hardly likely.

4. I am writing again to Messrs Oakes & Co for the information required; but, unless Government are prepared to pay off Messrs Oakes & Co's claim on the estate, I think the only course will be if Government wish to retain the land they bought, to take it up under the Land Acquisition Act and let Mr Brown take such steps as he may think fit to recover the value fixed by the Collector. It would be as well however to refer the matter again to the Advocate General before taking this step.

I am, Sir,
Your Obedient Servant
Ernest Barclay
Government Solicitor

2047 C d/ 11.11.82
383 W d/ 3.2.83
2364 W d/ 22.8.83
2857 W d/ 11.10.83
3140 W d/ 6.11.83
29 E d/ 19.4.84
747 E d/ 10.10.84
1267 W d/ 1.6.85
216 E d/ 11.6.85
217 E d/ 11.6.85
246 E d/ 18.6.85

Ex. Rpt. called for 7/7/85

9 JUL 85

No 355 E d/ July 14th

No 2093 W a/ 17-9-85

Vide docket of 1830 W d/ 18/7/82

No 336.

2093/32

Madras, 28 August 1885.

From,
Ernest Barclay
Government Solicitor
Madras.

To,
The Secretary to Government
Public Works Department
Ootacamund

Sir,

1. I beg to acknowledge receipt of your memorandum of the 25th instant No 518 E.

2. Section 55 clause 1 (a) provides that the seller is bound to disclose to the buyer any material defect in the property of which the seller is and the buyer is not aware and which the buyer could not with ordinary care discover and the section also provides that the omission to make such disclosure is fraudulent. Taking it that the defect in the property referred to here includes a defect in the title to the property, it is doubtful whether Government could not with ordinary care have discovered such defect by sending the title deeds to me for inspection before the purchase was completed, as directed by the Order of Government, an abstract of which is set out in the Proceedings of the Board of Revenue under date 9th May 1882 No 1283. As soon as I had inspected the title deeds and in my letter of 17 April 1883 No. 221 to Mr Brown I took objection to the title, to which Mr Brown replied that it was no part of his contract to guarantee his title. This was, of course, absurd, and if the flaw in the title had been discovered, as I think it might have been, before the purchase money was paid, Government could have quite well refused to complete the purchase. As however the defect could with ordinary care have been discovered by Government, I do not think Mr Brown can be prosecuted for fraudulently omitting to disclose the defect in the title. By merely searching the Registry of Assurances for the district, the mortgage to Mess. Oakes & Co could have been discovered.

I am, Sir
Your Obedient Servant

Ernest Barclay

Government Solicitor

Recd 7850

B. No. 1830 W d/ 18-7-82
No. 518 E d/ 25-8-85
" 355 E d/ 11-7-85
" 246 E d/ 18-6-85
" 217 E d/ 11-6-85
" 216 E d/ 11-6-85
" 39 E d/ 28-4-85
" 12 E d/ 18-4-85
" 747 E d/ 10-10-84
" 29 E d/ 19-4-84
B. No. 3140 W d/ 6-11-83
G.O. 2857 W d/ 11-10-83
" 2364 W d/ 22-8-83
" 383 W d/ 3-2-83
No. 2047 C d/ 11-11-82

Rd 7/9/85.

31 AUG 85

No. 2093 W d/ 17-9-85

[illegible] Cir: 2/9

No. 307.

[illegible]/34

Madras. 13 August 1885.

From.
Ernest Barclay
Government Solicitor
Madras

To.
The Secretary to Government
Public Works Department
Ootacamund

Sir,

With reference to your Memorandum dated 11 ultimo, No. 355 E. P.W. Department and as therein requested, I submitted the Papers relative to the house purchased from Mr. Brown at Vayitri, for the consideration of the Officiating Advocate General, and I herewith forward a copy of his opinion.

I am Sir
Your Obedient Servant
Ernest Barclay
Government Solicitor

Opinion

If I may assume that Government does not desire to surrender this plot of ground & taken over from Mr. Brown, it would seem that the alternative which now presents itself is either to accept the conveyance of the title, such as it is, which is offered, paying the consideration over again to the mortgagees, or to proceed under the Land Acquisition Act. Having regard to the unsatisfactory state of the title and the possible difficulty of getting the conveyance executed by the numerous persons made parties to it, I think that it would be better to adopt the latter course and thus acquire the firm right in the land as well as an unquestionable title to the lease. As however the adoption of this course will involve the payment of the compensation awarded under the Act to the persons found to be entitled to it, I should still advise a suit, such as already proposed, being instituted against Mr. Brown. The plaint should I think not only ask for payment of the sum of Rs 4,500 and interest, but also claim the damages resulting to Government from the loss of the bargain in which damages should be included the 15 per cent on the market value of the property, which Government will have to pay under Section 42 of the Act. Inasmuch as Mr. Brown concealed the Mortgage from the Officers, who negotiated with him on behalf of Government, and has failed to give an unincumbered title, I think that Government will clearly be entitled to recover from him the additional expense which they may incur in acquiring the property under the Act.

(Signed) H. H. Shephard
Acting Advocate General

Madras
12 August 1885

/A True Copy/

Ernest Barclay
Government Solicitor

2093/36

P.W. 1885 Dept.

C. No 7519 for

No [illegible] 25/8

16 AUG 85

2047 C d/ 11.11.82
383 W d/ 3.2.83
2364 W d/ 22.8.83
2857 W d/ 11.10.83
3140 W d/ 6.11.83
29 E d/ 19.4.84
747 E d/ 10.10.84
12 E d/ 18.4.85
216 E d/ 11.6.85
217 E d/ 11.6.85
246 E d/ 18.6.85
355 E d/ 11.7.85

Encl. 1.

No 518 E d/ Augt 25th 1885

No 2093 W d/ 8-9-83

Pasco [illegible]

L.S. 74/8

2093/37

P.W. Department

Read the following:—

Letter from the S.E. IV Circle No 322 d/ 4th August 1883
" ——— Do ——— " 217 E.W d/ 7th May 1884
" ——— Do ——— " 246.C/E.W d/ 10th May 1884
" ——— Do ——— " 227/E.W d/ 15th May 1884
" from the Govt. Solicitor, Madras " 541 d/ 14th October 1884
" from the ——— Do ——— " 146 d/ 24th April /85
" from the S.E. IV Circle " 204/E.W d/ 18th May /85
" ——— Do ——— " 235/E.W d/ 12th June /85
" ——— Do ——— " 252/E.W d/ 22nd June /85
" from the Govt. Solicitor, Madras No 234 d/ 7th July /85
" ——— Do ——— No 307 d/ 13th August /85

For orders

In proceedings, dated

3rd February 1883, No 383 W,

the Government sanctioned

the purchase, for Rs 4,500, of a house at Vajetri from a Mr H. W. Brown.

After the purchase-money had been paid, and the building taken over, the Government Solicitor found that the title was in a very unsatisfactory state, and, on the Advocate-General's opinion, printed with proceedings, dated 11th October 1883, No 2857 W, the Government authorised the institution of a suit against Mr Brown to compel him to convey the property to Government with a good title.

Subsequently however the Government Solicitor endeavoured to obviate the necessity for legal proceedings by preparing, in communication with Mr Brown's legal adviser, such a conveyance of the property as he could advise the Government to accept; but the difficulties in accomplishing this proved insuperable, and, as a last resource, the Government Solicitor, in his letter No. 146 of 24th April 1885, suggested that the property be handed back to Mr. Brown, and that a suit be filed to compel that gentleman to refund the purchase-money, subject to deduction of a reasonable amount as rent during the occupation of the

premises by the Government.

It then came to notice that Mr. Brown was in such poor circumstances that the recovery of any portion of the purchase money from him, even by legal process, was a doubtful matter, and inquiry was made whether a good title to the property could be secured by paying off the incumbrances on it.

This elicited the fact

that the mortgage on the estate amounted to Rs 10,000, which put a consideration of the proposed procedure out of the question.

The opinion of the Advocate General has now been finally obtained and he suggests

(1) to accept the conveyance of the title such as it is, paying the consideration (i.e. Rs 4,500) over again to the mortgagees

or

(2) to proceed under the Land acquisition Act, and thus establish an unquestionable title to the property.

The Advocate General advises the adoption of the latter course, but as it will involve the payment of the compensation to the persons found to be entitled to it, he further advises that a suit, such as already proposed be instituted against Mr Brown, to compel him to refund the purchase money, and the amount of the damages resulting to Government.

It is greatly to be regretted that the purchase-money was paid in the first instance without any reference to the question of title; but the house was bought very hurriedly for the Telegraph Department, and this important point appears to have been overlooked.

The building was occupied by the Telegraph Department for a few months only, and it has since been practically unused. If retained by Government, it can now be utilised as a Store, or as a residence for Subordinates employed on the Wynaad road improvements.

The undersigned recommends the adoption

of the course suggested by the Hon'ble Mr. Shephard.

W.S.
21·8·85

W

Hon'ble Mr. Sullivan

For orders

24 AUG 85

No. 518 Ed/ dated Aug 25 1885

But having regard to the provisions of Sec 25 Act IV of 1882 I would like to hear [illegible] whether the [illegible] [illegible] be passed as well [illegible] on other [illegible] [illegible] to the title & there [illegible] [illegible]

W

Cu

5th Ed/ O.W. 74/8. Cir. 21/8.

No. 518 Ed/ dated August 25th 1885

2093/42

P. W. Department

Memo:

The undersigned is directed to request the Government Solicitor to be good enough, with advertence to his letter No. 307 d/ 13th August /85, to advise the Government whether, in addition to the civil suit suggested by the Advocate General, a Criminal prosecution should not be instituted against Mr. Brown under Section 55

Act IV of 1882, he having failed to disclose a material defect in the title to the property at Vayitre sold by him to Government.

HS
25-8-85

W

No. 518 E. of date 25 [illegible]

Govt. Solicitor

Despd
25/8/85

Cn

2097

The Hon. H.G. Sullivan

Note.

With advertence to the Hon'ble Member's remark on the "For Orders" note of 21.8.85, it will be seen from the Govt. Solicitor's letter of 28.8.85, No. 336, that a criminal prosecution against Mr. Brown would not be sustainable.

Draft order circulated for approval.

HS
2.9.85

W

Cir. 2/9

CALICUT, TELLICHERRY
HINDE & Co.
& MANGALORE.

Calicut. 14th Sept 1892

2093
44

J. Trail Esqr
Executive Engineer
Dept Public Works
Cannanore.

Dear Sir.

We duly received your letter No 267 of 15th ulto and must apologize for not replying at an earlier date.

In reply to your enquiries regarding our property at Pookota near Vythery, the entire holding measures a r p 25. 84 held for a term of 70 years of which about 11 years have expired.

There is a brick-built office and store with shingle-roof.

We will sell the entire holding for Rs 6000. or we will let the buildings at Rs 60/- per month.

We will sell the Bungalow including

the plateau it stands on with right of way etc for Rs 1500. or we will let it for Rs 30. per mensem. Any extra land required immediately adjoining the Bungalow we would lease or sell at a moderate price per acre.

The late Mr Hughes C.E. valued this property at Rs 6725.

We are dear Sir
Yours faithfully
Hinde & Co

Report on Messrs Hinde & Co. house at Vythery S. Wynaad, proposed to be purchased for a telegraph Office

---

The house is situated about 3/4 miles S. W of the Vythery toll gate and 3 furlongs N. of the Pookote Store and Club.

As the latter place is where the planters and others who would be most likely to use the Telegraph mostly congregate, the situation is a most convenient one.

The house is built upon a small plateau cut out of the side of a hill - This plateau is about 120 yards long, by 20 broad & forms the compound.

The building is wooden throughout and except that the shingle roof leaks is in fair repair - It is very dirty and will require a coat of paint all over inside and outside.

The basement upon which the house is built is of earth, enclosed within masonry retaining walls 1 ft high. This 40' 6" long, by 32' 6" wide this gives an area of 1316.25 square feet.

must be added the small room ($8 \times 16\frac{1}{2}$) at N. end bringing the total up to 1448 sqre. feet - Comparing the building with similar ones I have seen in Wynaad I think 12 as per sq foot of area is a fair allowance and at this rate the building must have cost 1086/.

There is no flooring other than rammed earth to any portion of the building. This would have to be rectified and I think $4\frac{1}{2}$ inches of concrete with ½ inch cement plaster would be the best. The main roof only is shingle the verandahs and room at N. end are roofed with corrugated iron - Shingle roofs have a kutcha appearance and give considerable future trouble in renewing or turning, they are besides not very water tight and shingles are not easily procurable in the neighbourhood - I would suggest therefore that Mission tiles be substituted for the main roof - The verandah roof is too flat for anything but corrugated iron.

A ground plan Elevation and Section accompany this from which the general arrangement of the rooms & appearance of the building can be gathered.

The house as a private residence consisted of only 5 rooms - A dining room 18' 3" × 16' 6" with a pantry off it 11' × 8'; A bed room 14' × 16' 6" with a dressing room off it 16' 6" × 8' & a bath room the same size -

I doubt if the accommodation is sufficient. The rooms will probably have to be divided up or some additions made. There are also no out houses.

The woodwork seems in very fair preservation, except some of the reepers which have been attacked by white ants. They are placed at intervals of 6" so that if Mission tiles were adopted instead of them only ½ of the present number would be required and this proportion still remains in good order.

All the windows are glazed, the door on front side is half pannelled half glazed 6' 6" high and 4' 4" wide. The other doors are pannelled, same height & 3' wide except the doors in the back rooms which are ½ pannelled ½ glazed, are 3½ feet wide & 6'3" high

Camp Kunyambetta
16th July 1882 } Sd/ J. Traill
Executive Engineer

16 OCT 8
P. W.

(True Copy)

Captain RE
Executive Engineer

Ootacamund 22nd September 1882

From,

J. Traill Esquire
Executive Engineer
(on Special duty)

To,

The Executive Engineer
Nilgiri Division

Sir,

With reference to your No 981 dated 28th June I have the honor to submit the report &c called for together with a letter from Mr Ferguson stating the price at which he is willing to sell or rent the property.

The report would have been submitted earlier only I thought it better to await for Mr Ferguson's reply.

It will be seen that Mr Ferguson wants Rs1500 for the house and compound to this must be added

	Painting inside & outside	110 - -
14½ squares.	Flooring	290 - -
	Tiling	100 - -
	Out houses	say. 500 - -
	Add for signaller's quarters, peons & 2 latrines	1000 - -

There will probably be some alterations required which can only be estimated for after the plan of the building has been seen by an Officer of the Telegraph Department

I have the honor to be
Sir,
Your most obedient servant
(Signed) J. Traill
Executive Engineer

(True Copy)

Captn RE
Executive Engineer

18 OCT 82
P W

Enclosures

In a Letter No. 467 of
4th November 1882 from
the Supt. Engineer
4th Circle.

—

Particulars of enclo-
-sures:-

—

1 Letter from Mr. Traill
1 Report
1 Letter from Messrs. Hinde
1 Tracing

No. 467

Supt: Engineer's office IV Circle
Coimbatore, 4th November/82.

From,

The Superintending Engineer
IV Circle

To,

The Chief Engineer
P.W. Departt.

Sir,

I have the honor to forward herewith for your information the report of the Executive Engineer on Special duty Nilgiri Division on Messrs. Hinde & Co's building at Vythery, which it was proposed to purchase as an office for the Telegraph Department on the new Devalah-Calicut line.

Enclosures: 4
1 Letter from Mr. Traill.
1 Report.
1 Letter from Messrs. Hinde
1 Tracing.

2. It will be observed that the building is wooden throughout, with a shingle roof, and an earthen floor; covers an area of 1448 square feet; that it stands on a small plateau about 120 yards by 20, cut out of the hill side; and that the owner wants Rs 1,500 for it.

The

3. The Executive Engineer roughly estimates the cost of painting the woodwork of the walls doors and windows &c; improving the roof and floor; providing quarters for Signallers, and peons; latrines, and out houses; at Rs 2,000 more.

4. As it is not known exactly what additions and improvements the Telegraph Department would consider necessary, it is not possible to prepare detailed estimates. I request instructions with whom I should communicate about this.

5. The Executive Engineer also brought to my notice that Messrs. Brown & Co's house and godowns (see site Plan) were for Sale, and likely to prove more suitable than Messrs. Hindes'. I therefore wrote to Messrs. Brown but have not yet received a reply. I have also requested the Executive Engineer to take the earliest opportunity of seeing Messrs. Brown, and furnishing full information about their property and its price.

I have the honor to be
Sir
Your most obt servant

J. Beatty - Colonel R.E.
Superintending Engineer
IV Circle

A. 1453 W of 10.6.82
" 568 W of 6.3.82
" 91 E of 11.5.82

No. 2047 C of 11th Novr/82

The Supg. Engr. should confer with the Supdt of Telegraphs Malabar Dn. as to which of the two buildings referred to would be more suitable for a Telegraph Office, and in communication with the same Officers, he should as early as practicable, submit a complete estimate for the purchase of the building and for any additions or improvements which may be considered necessary by the Telegraph Departt.

10.11.82

S. Eng. Fourth Circle
with tracing
Despd 11/11/82

From
The Supg. Engineer,
Fourth Circle.

Dated 4th
Despd: Do } Novr: /82.

No. 467
No. 2047 C of 11th Novr/82.
Enc: 4

Telegraph Office at Devala: —

Forwarding report of Mr: Traill on Messrs. Hinde & Co. Building at Vytheri which it is proposed to purchase.

Entd. in Receipt Regr.

No. 570

Madras 31st October 1883

From
Ernest Barclay
Government Solicitor
Madras.

To
The Secretary to Government.
Public Works Department
Madras.

Sir,

1. I beg to acknowledge receipt of Order of Government dated 11th instant No. 2857 W Public Works directing me to take the necessary steps for instituting a suit against Mr Brown in respect of the title to the property at Vayitri sold by him to Government.

2. I regret to say that I am unable to bring any such suit in the High Court here as that Court has no jurisdiction in this case. The property in respect of which the suit would be brought is not situated within the ordinary original civil Jurisdiction of the High Court, and the contract for the sale of such property was not made, nor does the defendant reside within such Jurisdiction. The suit should be brought in the Court of the District within which Vayitri is situated viz Calicut and the Engineer of the District should be instructed to place the matter in the hands of some professional man practising in that Court.

3. On hearing from Government who is instructed to file the suit, I will place myself in communication

with him; or if it be preferred, I will myself instruct some one at Calicut to take the matter up.

I am Sir
Your Obedient Servant
Ernest Barclay
Government Solicitor

G.O. No. 3140 W. 6th Nov/83

B/

Communicated
to the Supdg Engineer
Fourth Circle, who
will instruct the
Ex. Engineer Nilgiri
Division to file a
suit against Mr
Brown in commu-
nication with the
Govt Solicitor

CS
1/11

E.O. 2857. W. 11.10.83
P.C.
29 E. 19.4.84.
749 E. 10.10.84

D
1/11

S.E. Fourth Circle
Govt Solicitor
Ex. P.W. accts

4 7 C [illegible]
19/11

P.W. Dept 581

Recd 1/11/83

G.O. No. 3140 W 6th Nov/83

With orders

~~[illegible]~~

2/

P.W. Dept

No. 29 E

Ootacamund, April, 19. 1884.

2093
57

Memorandum.

The Supdg Engineer IV Circle is requested to report the present position of affairs in respect to the suit against Mr. Brown, ordered to be instituted in G.O. No. 3140 W d/6th November 1883.

JM
18-4-84
EW

Suit Brown in Court 9/5/84

S.E. IV Circle

Despd 19/4/84

Reminder [illegible]

E.S.

No 2047 C d/ 11. 11. 82
" 383 W d/ 3. 2. 83
" 2364 W d/ 22. 8. 83
" 2857 W d/ 11. 10. 83
" 3140 W d/ 6. 11. 83

No 29 E d/ April 19. 1884

Public Works Depa

No 747 E d/ 10th Octr 1884

Memorandum

2093/55

Adverting to the letter from the Government Solicitor to the Executive Engineer, Nilgiris No 250 d/ 5th May 1884, in which it is stated that the question of Mr Brown's title to the property at Vagitri sold by him to Government, is engaging attention, the undersigned is directed to inquire as to the present position of the matter, and as to the probability of its early settlement

(Sd) J Shaw Stewart, Col. R.E.
Secretary to Government P.W.D.

To

The Government Solicitor,
Madras

desp. 10/10/84,

No. 747 Ed. 10th Oct. 1884

12671

Letter from Govt. Solicitor No 336
28.8.85

8093
556

To W

Proposed, with your approval, to draft an order authorising the adoption of the course suggested by the Advocate General, & saying nothing about criminal proceedings against Mr Brown.

Approved

Cu
31.8.85

The order will be sent to the H. M. in answer to his note of 24.8.85

Yes

Cu

JLS
31-8-85

No. 25

Grand Total of Estimate...

Executive Engineer.

Nilgiris Division

No 25

3552
11-7-85

Letter from S. S. IV No
252 Dd. of 27.6.85.

To W.

Apparently nothing more can now be done until receipt of a reply from the Govt Solicitor to No 217 E of 11.6.85.

Cu
27.6.85

Reminder to
Govt Solicitor
issued 1/7/85

Grand Total of Estimate...

Executive Engineer.
Nilgiri Division

246 E
18-6-85

Better enquire whether it would not be possible to utilise the source in connection with the Wynaad Road Sub Div?

M
17.6.85

No. 25

Grand Total of Estimate...

Executive Engineer.

Nilgiris Division

Secy Engr E.
19-4-84

What is the present position of affairs - re the matter treated of in the annexed Proceedings dated 22.8.83 No. 2364.

(Sd) JSS
12/4/84
W

Secy

Please have this refce attended to - The Ooty records have not yet come up

JHL
12/4/84

C.A.W.

Please see later G.O. No. 2857 W d/ 11.10.83

In reply thereto the Govt. [illegible]

Grand Total of Estimate... 4

Executive Engineer.

Nilgiri Div

being the local jurisdiction
of the High Court, the
Ex. Engr. Nilgiri Divn
in G.O. No 3140 w/ 6.11.83
was then ordered to
take legal proceedings against
Mr Poroon -

The latter paper
is not forthcoming
~~to~~ just now, & from
our books it would
appear that we have
not since heard from
the Ex. Engr. on the
subject - I shall have
the matter thoroughly
looked up when office
reopens on Wednesday -
& I shall then report
further.

14.4.84

To W.

Submitted for
information

RS 15-4-84

Noted. Please let me know
monthly how the case stands. M 16-4

What is the present
position of affairs - re
the matter treated of in
annexed Proceedings
dated 22-8-83. W 2364

M
12-4-84

No 25

Grand Total of Estimate... 4

E C Lawrence
Executive Engineer.
Nilgiris Divisi

No 25

9531.

Caw.

I now send up the complete file relating to Mr Brown's house at Vayitori –

We have heard nothing from S.E. IIIrd since the issue of G.O. No 3140 W of 6.11.93, directing him to file a suit against Mr Brown.

Ch
12/4/94

Grand Total of Estimate... 40

E C Lawrence
Executive Engineer.
Nilgiri Division

No 25/8384

H.C.

The rule applies chiefly to Advocate General's opinions, the Govt ~~[illegible]~~ Solicitor being a public official, in direct correspondence with Govt. I don't think there is any objection to printing his letters when occasion requires it.

In the case of the G.O. on Mr Brown's house Vagitri, I have marked the Adv. Genl's opinion "not to print", one MS copy only being sent to the Supdg Engr.

The Pros. may be printed as marked, but please keep the paper out of all perusal ~~[illegible]~~ files, except those for W. Dn. & the Assistants.

Cu
9.9.85

Executive Engineer.

Nilgiri Divi

No 25
8384

2883
4

7850

831

S A W.

Under para 225 a of the Secretariat Manual Legal opinions are to be considered confidential and not printed in Proceedings. In the accompanying draft Order C.A.W. has marked three letters from the Govt Solicitor to be printed.

BP
7/9/83

Can't b found 225.

I should have quoted 225 a. please see book sent.

BP

I have always understood that the order applies to Adv: Genl's opinions only. Send the papers on to Press for printing as marked by C.A.W. and meanwhile send up a note today to C.A.W. on the subject.

ly 1883.

Executive Engineer.

Nilgiri Divisio

C. A. W.

The file alluded to is about Mr Brown's house at Kaiyetti. Suppose there is no objection to print the Govt Solicitor's letters marked to be printed by you —

RP 17/9/85

The papers are gone & the Rep —

R&P

No 25
3384

~~2993
64~~

ESTIMATE FORM.—Abstract.

Quantity.	Description of Work.	Rate.	Per.	Amount.	Total.
		Rs.		Rs.	Rs.
1505½ ✓	S. ft. of Main Building with Stone basement, Walls planked, Mission tiled roof, asphalte and cement floor complete	2-4-..	S. ft	3387 ✓	
936 ✓	S. ft. of Out houses with planked walls, Mission tiled roof and Mud floor	-12-.	S. ft	702 ✓	
	Privy		Lump Sum	36	
3	Acres of Land		Lump Sum.	375	
	Alterations additions &c as per Separate Estimate		Rs.	370 ✓	

J. Beatty. Colonel R.E.
Supg: Engineer 4th Circle
4th Augt /83

Grand Total of Estimate... 4870 ✓

Station Ootacamund
Dated 29 July 1883.

Executive Engineer.
Nilgiri Division

NOTES.

REFERENCE TO MADRAS, P. W. D. CODE.

CHAPTER VII.—Paras. 966, 968, 968A, 978, 979, 983 to 986, 997, 1000 to 1003, 1071 to 1073.

(1.)—ABSTRACTS of Estimates should be prepared under such sub-heads as are to be separately shown in the Accounts (Register of works, workvouchers, &c.) of the work. For repairs of buildings and roads, the classification of the Budget Estimate should be strictly followed, one estimate only being framed for each Budget entry, and if a further estimate is required, it should be supplemental to the first; by this means, as the Work Abstracts follow the estimates, the Register of Work the Schedule of expenditure, the Books of the Central Office will show by one entry the entire outlay on repairs to each work for the whole year, which is not the case when several estimates are sanctioned for the repairs of one work in the course of the year.

(2.)—All rates are to be given in Rupees decimally divided to two places.

(3.)—Quantities are to be entered as so many units; thus the unit for brick-work being 100 cubic feet; 9250 cubic feet of brick-work would be entered as 92·5 units.

(4.)—In the duplicate copies of Abstracts intended for the Examiner, the following information should be filled in by the Executive Engineer:—

Probable duration of execution of works — Months

Probable number of work vouchers that will be required.

P. W. D. Madras,
Form No. M 77d.

ESTIMATE FORM.—ABSTRACT.

CIRCLE 4th

DIVISION— Nilgiris

TALUQ—

Abstract estimate for* Purchasing Mr. Brown's Bungalow at Pookote Vythery.

* Here enter the name and description of work in full.

No. 25 of 1883-84

2093/63

Financial Head— Imperial Provincial

Budget Head— Civil Building

Departmental Head— Original Work.

Main Head— Telegraph.

Sub-Head—

Project of which the work forms part—

ection—

Name of work— Valuation Estimate for Purchasing Mr. Brown's Bungalow at Pookote Vythery.

Amount of Estimate— Rs 4870-

To be carried out by— P.W. Department.

REFERENCES.

P.W.E.1 7/83

6654

P. W. D. Madras,
F. No. M 77.

1.

Reference to Madras, P. W. D. Code.

Chapter VII—Paras. 968 and 968 A.

ESTIMATE FORM—Wrapper or Outer Sheet.

Circle 4th

Division— Nilgiris

Talug— Wynaad Dt. Malabar

Estimate for* Purchasing Mr Browns Bungalow at Bokote, Vythery.

Amount of Estimate Rs. 4870-0-0.

Detailed Estimate No 25 of 1883-84

*Here enter name and description of work in full

4th Circle

Nilgiri Division

31 JUL 83
P.W.D.

Abstract Estimate No. 25 of 1883-84

Provincial
Civil Buildings
Original Work.

Work:- Valuation Estimate for Purchasing Mr. Brown's Bungalow at Bokote, Vythery.

Quantity	Particulars of charges	Rate	Per	amount	Total
1505½	S.ft of Main Building with stone basement, walls planked, mission tiled roof, asphalte and cement floor complete	2 4 ,,	S.ft	3387	
936	S.ft of out houses with planked walls, mission tiled roof and mud floor	,, 12 ,,	do	702	
	Privy	Lump Sum		36	
3	Acres of Land	Lump sum		375	
	Alterations, additions &c as per separate Estimate			370	
	Total Estimate Rs				4870

J. Beatty—Colonel R.E.
Supg: Engineer 4th circle
4th Aug/83

Ootacamund
13 July 1883.

Executive Engineer
Nilgiri Division

No. 25 of 1883-84

2093/67

Fund
~~Financial Head~~— Imperial

Service &c
~~Budget Head~~— Civil Building

Departmental Head— Original work

Main Head— Telegraph.

Sub-Head—

Project of which the work forms part—

Section—

Name of work— Purchasing Mr Brown's Bungalow at Pookote, Vythery

Amount of Estimate— Rs. 4870-0-0

To be carried out by— the Executive Engineer Nilgiri division

REFERENCES.

REFERENCE TO MADRAS, P. W. D. CODE.
CHAPTER VII—PARAS. 968 AND 968 A.

P.W. E2 / 6654 / e

P. W. D. Madras,
Form No. M 77.

~~[illegible]~~ Circ: 1/322/83 / S.E. IV

ESTIMATE FORM—WRAPPER OR OUTER SHEET.

4th CIRCLE

DIVISION— Nilgiri
TALUQ— Wynaad

Estimate for* Purchasing Mr. Brown's Bungalow at Pookote. Vythery

Amount of Estimate Rs. 4870-0-0

Detailed Estimate No. 25 of 1883-84

*Here enter name and description of work in full

No. 2093 W

PUBLIC WORKS DEPARTMENT.

B & R
Remarks

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 7th Septr./85

READ the following

Letter from the S.E. IV Circle (H.E. No. 322 d/ August 4th 1883)
Do. (" " 217 E.W. d/ May 7th 1884)
Do. (" " 246 C/E.W. d/ " 10th ")
Do. (" " 227/E.W. d/ " 15th ")
" from the Government Solicitor (" " 541 d/ October 14th ")
" Do. (" " 146 d/ April 24th 1885)
Memo to the S.E. IV Circle (" " 393 d/ " 28th ")
" S.E. IV Circle (" " 204/E.W. d/ May 18th ")
Do. (" " 235/E.W. d/ June 12th ")
Do. (" " 252/E.W. d/ " 22nd ")
" from the Govt. Solicitor (" " 234 d/ July 7th ")
Do. (" " 307 d/ Aug. 13th ")
Do. (" " 336 d/ " 28th ")

In Proceedings, dated 3rd February 1883, No. 383 W, the Government sanctioned the purchase, for Rs 4,500, of a house at Vayitri from a Mr. H. W. Brown.

2. After the purchase-money had been paid, and the building taken over, the Government Solicitor found that the title was in an ~~very~~ unsatisfactory state; and, on the Advocate General's opinion, printed with Proceedings, dated 11th October 1883, No. 2857 W, the Government authorised the institution of a suit against Mr. Brown to compel him to convey the property to Government with a good title.

3. Subsequently however the Government Solicitor endeavoured to obviate the necessity for legal proceedings by preparing, in communication with Mr. Brown's legal adviser, such a conveyance of the property as he could advise the Govt. to accept; but the difficulties in accomplishing this proved insuperable, and, as a last resource, the Government Solicitor, in his letter No. 146 d/ 24th April 1885, suggested that the property be handed back to Mr.

Brown, and that a suit be filed to compel that gentleman to refund the purchase-money.

4. On further advice, the Government now resolve to direct the Supdg Engineer to take the necessary steps in commun. with the Collector, to put into force the provisions of the Land Acquisition Act and thus to secure to the Govt an unquestionable title to the property. As however the adoption of this course will involve the payment of the compensation awarded under the Act to the persons found to be entitled thereto, the Supdg Engineer will further, in communication with the Govt Solicitor, institute a suit against Mr Brown, to compel him to refund the purchase money, and the amount of the damages resulting to Government.

5. The house, on its formal acquisition, may be utilised as quarters for the subordinates employed on the Wynaad road improvements.

9 S.E. IV Circle, with refs copy & the Advocate Genl's opinion.
11 Ex P.W. Accts.
4 Government Solicitor

DCS(W) 15/9/85

2.9.85

Ex EAS

Cu

Cus 7.9

2093/71

Cir.: 2/9

6163

Govt. of (1885) Madras.

PUBLIC WORKS.

Dated 8 / 85

Recd. Encl. 8 / 85 Recd 5-9-85 from

G.O. 7 Sept 1885, No. 2093 W

Mr Browne's property at Yangitri

Orders issued for acquiring — under the provisions of the Land Acquisition Act and for ~~public~~ instituting a suit against Mr Browne for refund of the purchase money

No 3. 50 Ph.

50 / 4

Id 8/9