

Go. 415

5th May 1857

Revenue Department

Minutes of Consultations

5th May 1857

Back N^{os} 43-44

Order no. 415 dated 5th May 1857

(26 Dec 57)

மாதுகாப்பு பிரிவு-1

செய்விருப்பவர் பெயர்

செய்விருவதற்காக

எடுத்துக்கொள்ளப்பட்ட நாள்

செய்விரு முடிந்த நாள்

சரிபார்க்கும்

முதல் மு.நி.பா.எ.

கையொப்பம்

சரிபார்க்கும்

2ம். நி.பா.எ.

கையொப்பம்

சரிபார்க்கும்

உதவியாள

கையொப்பம்

Fort Saint George, Revenue Consultation of 5th May 1857.

No. 43. Read the following Extract from the Minutes of Consultation in the Political Department, dated 21st April 1857, No. 304.

Read the following papers.

From Surgeon E. G. BALFOUR, Government Agent at Chepauk; to T. PYCROFT, Esq., Chief Secretary to Government, Fort St. George; dated 27th December 1856, No. 159.

SIR,

In my care of the original grants from Government, of lands and houses thereon, granted to their Highnesses the late Nabobs of the Carnatic, or purchased by these Nabobs, I observed that the lands have not been sold by Government, but are merely 99 years' leases on a quit rent, resumable or not at the expiration of that term: that fines are payable at the end of every thirty years; that the houses thereon must, as a condition of the lease, be kept in good repair. On further inquiry, I have not been able to learn that these periodical fines have ever been demanded, or that the Government are regarding all these lands so leased, in any other right than as property, sold and disposed of, over which they exercise no control; the real fact of the case being that the fee is in the Government of all these lands, and their holders are mere lease holders, paying certain rents and certain fines, for 99 years, the property then reverting to Government.

2. I need not point out, if these fines and the reversions of the land have indeed been neglected to be claimed for Government, as from what I have been told, has been indeed the case, that the current loss to Government is considerable and the ultimate loss immense; and the sooner it is rectified the better. The greatly increasing wealth of the proprietors of the west end of London is arising solely from the rapid reversions of the long leases. The Government grants are in fact only building leases for 99 years, conditioned for payment of rent to the East India Company and keeping premises in repair, as the following Extract from the wording of one of them will show, and the sooner measures are taken to show the rights of Government, the better, for the small nominal payment made at first sufficiently showed that it was not intended to be a permanent possession of the renter. The words are as follow:

"to have and to hold the said piece or parcel of ground, together with all benefits and advantages, arising or to arise thereby unto the said Messrs. Francis Latour and Co., their Heirs, Executors, Administrators, or Assigns, from the day of the date hereof, until the full end and term of ninety-nine years from thence next ensuing, and fully to be completed and ended; yielding and paying therefor yearly and every year, unto the said President and Council of Fort Saint George, for the time being, the rent of Pagodas 20-41-13 on the seventeenth day of July in every year, if the same be lawfully demanded, and yielding and paying therefor, at the end and expiration of every thirty years of the term hereby leased, unto the said President and Council of Fort Saint George for the time being, for the use of the said Company, the full and just sum of thirty Pagodas current money of Fort Saint George; and the said Messrs. Francis Latour and Co. do hereby for themselves, their Heirs, Executors, Administrators and Assigns, covenant and promise to, and with the said President and Council, in the manner and form following; that is to say, that they the said Messrs. Francis Latour and Co., their Heirs, Executors, Administrators or Assigns, shall and will truly pay or cause to be paid unto the said President and Council of Fort Saint George, for the time being, the said yearly rent and sums hereby reserved at the times, and in the manner and form aforesaid, according to the reservation thereof, for and during the term hereby demised: and further that the said Messrs. Francis Latour and Co. their Heirs, Executors, Administrators or Assigns shall and will, at their own proper costs and charges, well and sufficiently finish the said intended Messuage, or Tenement, and the same being so finished, shall at their own proper cost and charges, will and sufficiently, uphold, support, sustain, maintain, and amend, the same from time to time, and at all times during the said term. And further that they the said Messrs. Francis Latour and Co., their Heirs, Executors, Administrators, and Assigns, shall not, nor will, at any time during the term hereby demised, assign or set over this indenture of lease, or grant a lease of the premises hereby demised, or any part thereof to any person or persons, whomsoever, who shall not be under the license and protection of the said company, nor shall at any time during the term hereby demised, do, or, willingly cause or suffer any act or thing to be done, in and upon the said demised premises, or any part

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"thereof, which may grow to the annoyance, grievance, or damage of the said Company, their tenants or the inhabitants, or their bounds; *provided always*, that if the said Messrs. Francis Latour and Co., their Heirs, Executors, Administrators, or Assigns shall at any time or times during the term of the demise, fail in the performance of all or any of the covenants and agreements, which on the part and behalf of the said Messrs. Francis Latour and Co., their Heirs, Executors, Administrators or Assigns, are or ought to be done and performed, that then it shall and may be lawful to, and for the said President and Council, for the time being, for and on behalf of the said Company into and upon the said hereby demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess and enjoy, as this lease had never been made, any thing herein contained to the contrary thereof in any ways notwithstanding, and the said President and Council for and on behalf of the said Company, do hereby promise, covenant, and agree to, and with them Messrs. Francis Latour and Co., their Heirs, Executors, Administrators and Assigns, that the said Messrs. Francis Latour and Co., their Heirs, Executors, Administrators or Assigns, paying the said yearly rent and sums reserved, and performing the covenant hereinbefore contained which on their part and behalf, are or ought to be paid, performed and kept, shall and may from time to time, and at all times hereafter for and during the terms of this demise, peaceably and quietly have, hold, use, occupy, possess, and enjoy, the said piece or parcel of grounds with the appurtenances without the lawful let, suit, trouble, ejection or disturbance of the said Company, or any person or Persons whatsoever, lawfully claiming or to claim, by, from, or under them. And the said President and Council for and on behalf of the said Company, do hereby further promise, covenant, and agree to, and with the said Messrs. Francis Latour and Co., their Heirs, Executors, Administrators, and Assigns, that they the said Messrs. Francis, Latour and Co., their Heirs, Executors, Administrators, or Assigns, fulfilling the covenants, and agreements, herein before contained, and on their part to be performed and yielding and paying at the end and expiration of the aforesaid term of ninety nine years, unto the said President and Council of Fort Saint George, for the time being, for the use of the said Company, the full and just sum of one hundred Pagodas, current money of Fort St. George, then this lease shall and may be renewed for a further term of ninety nine years, upon such terms and conditions as shall be judged reasonable. In witness whereof, the said President and Council have set their hands, and caused the seal of the said Company to be affixed, in Fort St. George, the day and year first above written."

3. I am given to understand that the subject of the 30 years fines, has been before Government and disposed of, but that of the 99 years' lease has never been so far as I can learn, and I therefore submit for consideration.

From Surgeon E. G. BALFOUR, Government Agent at Chepauk; to T. PYCROFT, Esq.,
Chief Secretary to Government, Fort Saint George, dated 9th January 1857, No. 7.

SIR,

The Right Honorable the Governor in Council in Extract Minutes of Consultation No. 17 of 1857, directs to be furnished with a list showing the several leases referred to in my communication of the 27th December No. 159 of 1856; the dates when they were respectively executed; the quit rent payable annually when any; the fines payable when and to what amount; and what have been and have not been duly paid according to the terms of the lease. I have the honor to report that my former letter had reference to every original grant or indenture of land leased by this Government for building purposes to parties. The terms in the few grants found amongst the records of the Carnatic Durbar, having attracted my attention, the facts as they subsequently were mentioned to me appear to be as follows.

2. The lands are granted for 99 years for building purposes, to be possessed so long as a tenantable building remains thereon, at an annual quit rent; with a fine every 30 years of 30 Pagodas, and renewable or not at the pleasure of Government at the end of 99 years by payment of another fine of 100 Pagodas, and if so renewed, the lease stands good for another 99 years.

3. I have the honor to mention that copies of all the leases in Chepauk palace can be furnished. But my letter had reference to the whole building grants given by the Government, for which the annual quit rents are regularly demanded and paid, but neither the 30 years fine

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nor the 99 years fines have ever, in any case, so far as I can understand, been even asked for; and however inadvertently the 30 years fines may have been neglected, the 99 years fines or resumption need not in my opinion be so, and it was with this reason that I addressed Government. But the minute information required by Government can only be furnished by the Board of Revenue.

MEMORANDUM.

Lands held at the Presidency on lease from Government.

1. Shortly after assuming charge of the Dufter of his Highness the late Nabob of the Carnatic, Dr. Balfour brought to the notice of Government, the existence of certain deeds, whereby Government had conveyed to the Nabobs, their "heirs, administrators and assigns" certain lands within the Presidency limits on certain terms.

2. Some of these lands have been sold out-right by the Government. The greater portion however, are merely 99 years' leases on a quit rent, resumable or not at the expiration of that term. Fines are payable every thirty years; houses must be built on the land and kept in repair, the lessee is at no hand to sub-let the premises to persons not under the license of the Company, or in any way hostile to that honorable body. And at the expiration of 99 years on payment by the lessee of a fine of 100 Pagodas, then "this lease shall and may be renewed for a further term of 99 years upon such terms and conditions as may be deemed reasonable."

3. Dr. Balfour believes that these periodical fines and their rights in reversion have been heretofore neglected by Government, the first, advisedly, and the second, unwittingly, and he recommends a scrutiny.

4. In reply, he was requested to submit a list of the leases with full particulars, and he explains that his letter had reference, not only to the Chepauk grants (copies of which can be had, if desired) but "to the whole of the building grants given by Government, for which the annual quit rents are regularly demanded and paid; but neither the 30 years' fines nor the 99 years' fines have ever, in any case, so far as I can understand been even asked for."

5. It appears from the records in the Government office that these leases (the terms of which have been correctly described above) were first granted in the year 1774 *tempore* Governor Alexander Wynch. The number on the roll is 1,366. Some are for land in the Mofussil Cantonnments and stations, but the major part are for building sites in Madras itself. The Governor took a lease, so did Sir Hector Munro, and many other notables, Lushingtons, Sullivans, Chases &c.

6. The next paper on record is a letter to Lord Hobart from the Board of Revenue dated 1st June 1797. It appears that the Superintendent of Company's land had sent up to the Board several applications for the issue of "grants" in respect of sundry gardens, in the possession of the applicants, who at the same time produced as title deeds, some *Choultry Court* Bills of Sale and some Sheriff's Bill of Sale. The Board were led to call for a list of all gardens held under these two titles, and it was elicited that cawnies 1171 were so held, out of which 185 only paid any quit rent.

In whatever way these lands were transferred from one holder to another, the Government quit rent, the Board opined, must still be paid. In July 1794, they observe, an advertisement was published requiring all persons holding grants of Government to have the same registered; and they recommend that on the payment of arrears at 1½ Pagoda per Cawny from the said date, grants be issued to all applicants whose title deeds are of an age antecedent to July 1794, and that the same be refused for all enclosures made without the sanction of Government subsequently to that advertisement. This refusal, it is supposed, as the Government are in the position of chief landlord, would be equivalent to an ouster.

But see para. 10.

7. No answer to the above is forthcoming in the records at the Government office.

8. On the 16th May 1800, the Board having reported to Government the existence of a great variety of titles to land prevailing in Black Town, the difficulty in ascertaining the right

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belonging to each person and the encroachments on the rights of the Company, the Government (7th June following) directed the Board as follows.

A. A register of all holdings to be established in the Board's office, with a record of all title deeds.

B. Regular Certificates to be granted to all who asked for them either in lieu of former title deeds, or where the possessors may have occupied the ground without any.

C. Persons shown to have been 30 years in undisturbed occupation of Company's ground not to be deemed trespassers, but to be furnished with formal grant without any payment on account of purchase money.

D. Where encroachments have been made within 30 years the ground to be sold, a preference or right of pre-emption being allowed the present incumbent.

9. The Board are not well pleased with these terms; they deprecate them as unnecessarily liberal, and deplore the loss of revenue, which will arise from the limitation of the retrospect. The Government, however, adhere to their former resolution. They still think the severer scrutiny impolitic. To prevent future abuses, they will allow the Superintendent of lands a commission of $2\frac{1}{2}$ per cent. on all sales.

10. On the 27th October in the same year, the Board again bring before Government the subject discussed in their letter unanswered, of the 1st June 1797. The Government on this occasion lose no time in replying. On the 31st idem they record their opinion and give their orders on the whole subject as under.

A. They agree with the Board that no bill of sale whatsoever can exempt the incumbent from the payment of quit rent. All such title deeds both within and without Black Town should be at once called in, and grants and certificates be granted in lieu thereof. A grant, if the ground is more than one cawny in extent, a certificate, if under.

B. The Board therefore will consider no ground exempt from quit rent, unless under a Government grant specifically exempting the holder from such acknowledgment. In such cases a fresh certificate to be issued on the same terms.

C. Henceforth the grant of Government on the certificates of the Board shall be the only title deeds in force.

D. Approve of the Board's suggestion to demand arrears of quit rent from all Proprietors of gardens who have neglected obedience to the repeated notifications of Government, requiring them to take out grants from the period of enclosure. But in no case are the arrears to be demanded for any period antecedent to 1st January 1791.

Note.—The Board state that in two villages only land extending to 1,100 Cawnies and assessable (at the usual rent of $1\frac{1}{2}$ Pagodas per Cawny) at 1500 Pags. has been so enclosed.

11. Nothing further comes on record till the year 1812. The Board then, October 5th, lay before Government 25 applications for grants received by them through the Collector of Madras. In one of these cases it was reported that payment of reserved* rent had been resisted on the plea, that the present proprietor was not in possession at the time that the same became due; "The stipulation it appears was heretofore considered a mere form and its fulfilment never required." The Board therefore recommend that no demand for arrears on account of reserved rent be preferred except in cases where no transfer in the property may have taken place subsequently to the expiration of the term of payment.

12. The Government concurred and directed the Board to publish a Notification to the foregoing effect, at the same time, they enquired whether there would be any objection to the issue of grants in future from the office of the Collector of Madras.

13. The Board 22d July 1813 report that they have consulted Mr. Ellis the Collector who has been in communication with the Law officers, and that there appears to be no objection to the

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change in the mode of issue. Some rules in regard to the form of the new Certificates had been

drawn up by Mr. Ellis, which the Board, with some modifications, approved of,* Mr. Ellis had been informed by the Law officers that the grant is a legal and not a revenue document. It will accordingly, the Board suggest, be necessary to guard against the interference of the Supreme Court by express Regulation. The Board are already engaged in preparing a Regulation for "every branch of revenue in the Collectorate, and in submitting that draft

"they will enter more fully into the subject."

14. On the 31st following, Government informed the Board that a reference would be made to the Law officers. This was done the same day.

Two questions were put to the Advocate General.

1st. Whether payment can be enforced by distraint, or by any other mode of proceedings warranted by the Company's Regulations.

26th November 1813. Answer. Distraint would be lawful.

2ndly. Supposing the 1st question answered in the negative, can the necessity of resorting to legal process for payment of quit rent be legally obviated by following the suggestion made by the Board, to the effect that a clause should be added to the certificate making the ground and buildings liable to resumption of quit rent, or in any other way?

30th November 1813. Answer. No additional clauses need be added to the printed grant now in use.

15. The foregoing opinion was transmitted to the Board and it having been stated by them in their letter of the 22d July preceding that the Company's Law officers saw no objection to the issue of grants under the seal and signature of the Collector of Madras, that arrangement was sanctioned. The Board were to take care that the precise form of the grant be approved of by the Law officers, and the sanction of Government would still be required before each issue. The Government, at the same time, authorized the publication of the draft rules drawn up by the Collector, provided the Company's legal advisers should not see legal objection to the levying the reserved quit rent or fine from the person who may be in possession of the ground when such fine falls due.

16. In 1828, the subject again comes forward in a letter from the Board of Revenue, and is disposed of by Government on the date noted in the margin. The Board submit new forms of instrument prepared by the Advocate General and recommended by him to be substituted for the grants and certificates at present in use by the Collector of Madras.

17. The present Company's grant is objected to, because while confessedly nothing more is intended by the deed than to lease out the interest of Government in the ground, saving all other interests, yet, by the terms of it an absolute property is asserted, and in practice the applicant has to give up his title deeds by which he obtained and holds possession of his ground, and "to consent to their being cancelled." This done, he is permitted to take out his grant, "in fact he gives up his right to Government, and receives it back with a boon with certain additions attached to it."

18. This course is highly objectionable as creating a confusion of title. No deed of the kind should be executed by Government, except when a party is in possession under a good title. Then the Government may issue their instrument confirming the possession, so far as the Company is concerned in consideration (a) of the good title aforesaid and (b) of a covenant on behalf of the party in possession to pay a yearly quit rent as a commutation of the Government interest† on the ground, it being provided that Government may distrain in default, a counterpart to be executed by the party and lodged with the Collector.

19. Form A is adopted to the case of an original purchase from Meerasidars. Form B. to the case of a purchase or transfer from an intermediate possessor.

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Both these Documents were to be sealed with the Company's seal, and in neither is there any notice whatever of the fine at the end of 30 years, or of that leviable on a fresh lease at the end of 99 years. In fact no period is assigned for the expiry of the demise.

20. Form C is a form of Petition to be presented by parties on succeeding to property to the Collector; and Form D is the recognition by the Collector of the receipt of such petition. This document is not sealed with the Company's seal.

21. Government approved these instruments and directed they should serve in lieu of those heretofore in use.
7th March 1828.

22. Five years afterwards the Board discover that in the interim the Collector has been affixing his own seal to each certificate. Government authorize the Collector in future to send the documents to the Government office to be sealed.
17th June 1833.

23. On the 22nd August 1853, the Board submit their opinion on the general question as to the modifications which may be made at the present date, in the forms of these Certificates. They observe that the provisions of Act XII. of 1851, "an Act for securing the land Revenue of Madras," render it unnecessary to retain the clause providing for distraint. They think too that the Collector's seal may be affixed to the document in lieu of the Government office seal belonging to the East India Company. The only reason for the use of the latter has been the fact of the recital of the deed referring to it. To meet this, they proposed to score out so much of the recital.

24. Government concur generally, but resolve to forward the question of the seal to the Advocate General. They would not however score out any part of the deed so long as any copies of the old form are yet in store.
4th October 1853.

25. The Advocate General replies that as a general rule, the seal of the Collector would not bind the East India Company; but he sees no objection to its use in lieu of the Company's seal "if the Governor in Council shall make an order authorizing the Collector so to do."
7th October 1853.

26. The order was made accordingly in Extract Minutes of Consultation under date the 22nd idem.

26th March 1857. (Signed) D. F. CARMICHAEL.
Dy. Secretary.

NOTE.—In 1855, Government after a correspondence with the Collector of Madras, the Board of Revenue and Mr. Sydney Smith, the Advocate General, moved the Honorable D. Elliott to propose a Bill for supplying a defect in Act XII. of 1851 aforesaid. That Act contained no provision for the sale of the land in the realization of the Revenue of Madras. The Advocate General in his letter 14th March 1854, objected to the forms approved of in 1828, under the advice of Mr. Compton then Advocate General, for Government grants and certificates for Lands. They appeared to him to commit the Collector to an inquiry into the title of the party in occupation, and also to contain a ratification on the part of the Company of the procedure by which the land has come into the possession of its present holder. This objection was brought to the notice of the Honorable D. Elliott, with an intimation that the inconveniences alluded to had never once been felt during the 26 years Mr. Advocate General Compton's form had been in use.

22d May 1855.
(Signed) D. F. CARMICHAEL,
Dy. Secretary.

1. Shortly after assuming charge of the Dufter of his Highness the late Nabob of the Carnatic, Dr. Balfour brought to the notice of Government the existence of certain deeds, whereby Government had conveyed to the Nabobs, "their heirs, Administrators and Assigns," certain lands within the Presidency limits on certain terms.

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2. These Grants were, Dr. Balfour said, merely 99 years' leases on a quit rent, resumable or not at the expiration of that term. Fines are payable every thirty years; houses must be built on the land and kept in repair, the lessee is not to sub-let the premises to persons not under the license of the company, or in any way hostile to them. And at the expiration of 99 years, on payment of a fine of 100 Pagodas, then, "this lease shall and may be renewed for a further term of 99 years upon such terms and conditions as may be deemed reasonable."

3. Dr. Balfour believes that these periodical fines and their rights in reversion have been heretofore neglected by Government, the first advisedly, and the second unwillingly, and he recommends a scrutiny.

4. In reply, he was requested to submit a list of the leases with full particulars, and he explains that his letter had reference, not only to the Chepauk grants (copies of which can be had, if desired) but, "to the whole of the building Grants given by Government, for which the annual quit rents are regularly demanded and paid; but neither the 30 years' fines nor the 99 years' fines have ever in any case, so far as I can understand, been even asked for."
7th June 1857.
9th idem.

5. It appears from the records of the Government office that these leases (the terms of which have been correctly described above) were first granted in the year 1774, *tempore* Governor Alexander Wynch. The number on the roll is 1366, some are for land in the Mofussil Cantonnments and stations, but the major part are for building sites in Madras itself. The Governor took a lease, so did Sir Hector Munro and many others.

6. The grants here alluded to were in the old form which has not been in use for the last 30 years. The mere recent forms introduced in 1828 do not contain the stipulation for the 30 or 99 years' fine. As regards the old grants, the first of these conditions would seem never to have been regularly enforced, and the 99 years' fine, if the grants date only from the year 1774, has not yet become payable.

7. The Right Honorable the Governor in Council would however wish to have some further information in respect to these grants. He resolves therefore to refer the Government Agent's letters and the Memo. of correspondence drawn up by the Deputy Secretary to the Public Department, in view to the Revenue Board being called upon to procure lists of the grants of this description still extant for lands either at Madras or in the Provinces, with explanation as to the nature and extent of the property held under each of them, what fines have been paid, and when not paid, the circumstances under which the demand was intermitted, with any other particulars that may be ascertainable. The Government Agent will also be requested to submit a list of these grants held by the Carnatic Sircar, with similar information in respect to them, as far as he can afford it.

(True Extract.)
(Signed) T. PYCROFT,
Chief Secretary.

No. 44. ORDER THEREON, No. 415; dated 5th May 1857.

Ordered to be communicated to the Board of Revenue, with a request that they will procure and submit to Government lists of the description required in para. 7 of the foregoing Minutes of Consultation.

(Signed) H. FORBES,
Acting Secretary to Government.

houses thereon must, as a condition

Received from the Hon. J. L. ... do the 27th Dec 1856.
Government Agent's Office
27th December 1856.

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W. Tholacungum

Read the following letter

From
Surgeon C. G. Ballance
Government Agent at Chepauk

To.
J. Perciott Esquire
Chief Secretary to Government
Fort St George

Sir,
In my care of the original
grants from Government, of lands
and houses thereon, granted to
their Highnesses the late Nakhos
of the Carnatic or purchased by
these Nakhos, I observed that the
lands have not been sold by
Government, but are merely 99 years
leases on a quit rent, renewable
or not at the expiration of that
term: that fines are payable at
the end of every thirty years; that the
houses thereon must, as a condition
of

of the lease, he kept in good repair. On further inquiry I have not been able to learn that these periodical fines have ever been demanded, or that the Government are regarding all these lands so leased, in any other right than as property, sold and disposed of, over which they exercise no control; the real fact of the case being that the fee is in the Government of all these lands, and their holders are mere lease holders, paying certain rents and certain fines, for 99 years, the property then reverting to Government.

2. I need not point out, if these fines and the reversions of the land have indeed been neglected to be claimed for Government, as from what I have been told, has been indeed the case, that the current loss to Government is considerable and the ultimate loss immense; and the sooner it is rectified the better. The greatly increasing wealth of the proprietors of the west end of London

is

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is arising solely from the rapid reversions of the long leases. The Government grants are in fact only building leases for 99 years, conditioned for payment of rent to the East India Company and keeping premises in repair, as the following Extract from the wording of one of them will show, and the sooner measures are taken to show the rights of Government, the better, for the small nominal payment made at first sufficiently showed that it was not intended to be a permanent possession of the renter. The words are as follow.

* * * * *

"to have and to hold the said Piece
"or Parcel of Ground, together with all
"its benefits and advantages, arising
"or to arise thereby unto the said Messrs
"Francis Latour & their Heirs, Executors,
"Administrators, or Assigns, from the
"day of the date hereof, until the full
"end and term of thirty-nine years
"from thence next ensuing, and fully
"to be completed and ended; yielding
"and

"and paying therefor yearly and every
"year, unto the said President and
"Council of Fort St George, for the
"time being the rent of Pagodas 20-41-13.
"on the seventeenth Day of July in every
"year, if the same be lawfully de-
"manded, and yielding and paying
"therefor, at the end and expiration
"of every thirty years of the Term hereby
"leased, unto the said President and
"Council of Fort St George for the time
"being, for the use of the said Company,
"the full and just sum of thirty Pa-
"godas current money of Fort St George,
"and the said Messrs Francis Lalaur &
"heirs for themselves, their heirs,
"Executors, Administrators and
"Assigns, covenant and promise to,
"and with the said President and
"Council, in the manner and form
"following, that is to say; that they the
"said Messrs Francis Lalaur & their heirs,
"Executors, Administrators or Assigns,
"shall and will truly pay or cause to
"be paid unto the said President and
"Council of Fort St George, for the
"time

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"time being, the said yearly Rent, and sums
"hereby reserved at the times, and in the
"manner and form aforesaid, according
"to the reservation thereof, for and during
"the Term hereby demised: and further
"that the said Messrs Francis Lalaur
"& their heirs, Executors, Adminis-
"trators or Assigns shall and will,
"at their own proper Costs and charges,
"well and sufficiently finish the said
"intended Messuage, or Tenement, and
"the same being so finished, shall at
"their own proper cost and charges,
"well and sufficiently, uphold, sup-
"port, sustain, maintain, and
"amend, the same from time to time,
"and at all times during the said term.
"And further that they the said Messrs
"Francis Lalaur & their heirs, Executors,
"Administrators, and Assigns, shall
"not, nor will, at any time during
"the term hereby demised, assign
"or set over this Indenture of Lease,
"or grant a Lease of the Premises
"hereby demised, or any part thereof
"to

"to any person or persons, whomever,
"who shall not be under the License
"and protection of the said Company,
"nor shall at any time during the term
"herby demised, do, or, willingly cause
"or suffer any act or thing to be done,
"in and upon the said demised pre-
"mises, or any part thereof, which may
"give to the annoyance, grievance,
"or damage of the said Company, their
"Tenants or the Inhabitants, or their
"Bounds; Provided Always, that if
"the said M^{rs} Francis Latour & Co
"their Heirs, Executors, Administrators,
"or Assigns shall at any time or
"times during the term of the Demise,
"fail in the performance of all or any
"of the Covenants and Agreements,
"which on the part and behalf of the
"said M^{rs} Francis Latour & Co their
"Heirs, Executors, Administrators or
"Assigns, are or ought to be done
"and performed, that then it shall
"and may be lawful to, and for
"the said President and Council,
"for the time being, for, and on behalf
"of

Mr. Isaac 1777

84
9/15
"of the said Company, into and upon
"the said herby demised Premises or
"any part thereof, in the Name of the
"whole to re-enter, and the same to
"have again, re-possess and enjoy, as
"this Lease had never been made, any
"thing herein contained to the contrary
"thereof in any ways notwithstanding
"and the said President and Council
"for and on behalf of the said
"Company, do hereby promise, Co-
"venant, and agree to, and with
"them M^{rs} Francis Latour & Co their Heirs,
"Executors, Administrators and
"Assigns, that the said M^{rs} Francis
"Latour & Co their Heirs, Executors,
"Administrators or Assigns, pay-
"ing the said yearly Rent and sums
"reserved, and performing the Covenant
"hereinbefore contained which on their
"part and behalf, are or ought to be
"paid, performed and kept, shall
"and may from time to time, and
"at all times hereafter for and during
"the Term of this demise, peaceably
"and quietly have, hold, use occupy,
"possess

"possess, and enjoy, the said Plot or Parcel
of Grounds with the appurtenances with-
out the Lawful Let, Suit, Trouble, Exce-
tion or Disturbance of the said Com-
pany, or any person or Persons what-
soever, lawfully claiming or to claim,
by, from, or under them. And the
said President and Council for and
on behalf of the said Company, do
hereby further promise, covenant,
and agree to, and with the said Messrs
Francis Latour & their Heirs, Executors,
Administrators, and Assigns, that they
the said Messrs Francis Latour &
their Heirs, Executors, Administrators,
or Assigns, fulfilling the Covenants,
and Agreements, herein before con-
tained, and on their part to be per-
formed and yielding and paying at
the end and expiration of the aforesaid
Term of Ninety-nine years, unto the
said President and Council of
Fort St George, for the time being,
for the use of the said Company, the
full and just sum of one Hundred
Pagodas

10/11/55
Pagodas, Current money of Fort St George,
then this Lease shall and may be re-
newed for a further term of Ninety-nine
years, upon such Terms and Conditions
as shall be judged reasonable. In
Witness Whereof, the said President
and Council have set their Hands,
and caused the Seal of the said Com-
pany to be affixed, in Fort St George,
the Day and year first above written.

3. I am given to understand that
the subject of the 30 years fines, has
been before Government and dis-
posed of, but that of the 99 years
lease has never been so far as
I can learn, and I therefore sub-
mit for consideration.

Sout. Agents Office } I have the honor to be
27th December } Sirg of Edward Balfour,
1856- } Government Agent

Read also the following Report

From

No 7 of G. A.

From
Surgeon E. G. Balfour
Government Agent at Chepauk

To,
J. Percroft Esquire
Chief Secretary to Government
Fort St George

Sir,
The Right Honorable the Go-
vernor in Council in Extract Minutes
of Consultation No 17 of 1857 directs to
be furnished with a list showing
the several Leases referred to in
my Communication of the 27th De-
cember No 159 of 1856; the dates when
they were respectively executed; the
Quit Rent payable Annually when
any; the fines payable when and to
what amount; and what have been
and have not been duly paid ac-
cording to the terms of the Lease. I
have the honor to report that my
former letter had reference to
every original Grant or Indenture
of

11/15
of Land leased by this Government for
building purposes to parties. The
terms in the few Grants found
amongst the records of the Carnatic
Durbar, having attracted my at-
tention, the facts as they subsequently
were mentioned to me appear to
be as follows.

2 The Lands are Granted for
99 years for building purposes to be
possessed so long as a tenable
building remains thereon, at an
Annual Quit Rent, with a fine
every 30 years of 30 Pagodas and
renewable or not at the pleasure of
Government at the end of 99 years
by payment of another fine of
100 Pagodas, and if so renewed the
Lease stands good for another
99 Years.

3 I have the honor to mention
that Copies of all the Leases in
Chepauk Palace can be fur-
nished. But my letter had re-
ference to the whole building
Grants

Grants given by the Government,
for which the Annual Quit-Rents
are regularly demanded and paid,
but neither the 30 years fine nor
the 99 years fines have ever, in
any case, so far as I can under-
stand, been even asked for;
and however inadvertently the 30
years fines may have been neg-
lected, the 99 years fines or resump-
tion need not in my opinion
be so, and it was with this reason
that I addressed Government.
But the minute information
required by Government can
only be furnished by the Board
of Revenue.

Gent. Agents Office
9th January
1857. } I have the honor to be &c.
Sd. J. Edward Balfour
Government Agent.

Memo

B. Memo 11

12/15
Memo
Lands held at the Presidency on lease
from Government.

27th Decr/56

1. Shortly after assuming
charge of the Office of his Highness
the late Nalob of the Carnatic, Dr.
Balfour brought to the notice of
Government, the existence of certain lands,
whereby Government had conveyed to
the Nalob's third - "Heir's adminis-
trator and assigns" certain lands
within the Presidency limits on cer-
tain terms.

2. Some of these lands have
been sold outright by the Government.
The greater portion however, are more
99 years leases on a quit rent, re-
sumable or not at the expiration of
that term. Fines are payable every thirty
years, houses must be built on the
land and kept in repair. The leases are
at

at no hand to put it to the premises
to persons not under the license
of the Company or in any way
hostile to that Honorable Body.
And at the expiration of 99 years
no payment by the lessee of a fine
of 100 Pagodas, then this lease
shall and may be renewed for a
"further term of 99 years upon such
terms and conditions as may be
"deemed reasonable".

3. Mr. Balfour believes
that these periodical fines and their
rights in reversion have been heretofore
neglected by Government - the first
advisedly, and the second unwittingly
and he recommends a remedy.

4. In reply he was re-
quested to submit a list of the
leases with full particulars and
he explains that his letter had reference
not only to the Spanish grants (copies
of which can be had, if desired)
but

13/15
812
but to the whole of the Building
"grants given by Government for which
"the Annual Duties are regularly
"demanded and paid, but neither
"the 50 years fines nor the 99 years
"fines have ever in any case, so far
as I can understand, been even asked
for."

5. It appears from the
Records in the Government Office
that the so leases, the terms of
which have been correctly described
above, were first granted in the year
1774 for Governor Alex^r. Mynck.
The number in the roll is 1500. Some
are for land in the Mofussil Canton-
ments and stations but the major
part are for building sites in Madras
itself. The Governor took a lease
so did Sir Hector Munro and many
other notables Washington Sullivan
Chase &c.

6. The next paper on record
is

is a letter to Lord Hobart from the
Board of Revenue dated 1st June 1797.
It appears that the Superintendent
of Company's lands had sent up to
the Board several applications for
the issue of "grants" in respect of
sundry gardens, in the possession of
the applicants, who at the same time
produced as Title deeds, some Choultry
Court & Bills of Sale, and some
Sheriff's Bill of Sale. The Board
were led to call for a list of all
gardens held under these two titles,
and it was elicited that gardens
1771 were so held, out of which 188
only paid any Quit rent.

In whatever way these lands
were transferred from one holder to
another the Government Quit rent
the Board opined, must still be
paid. In July 1794, they observe, an
advertisement was published
requiring all persons holding grants
of

13
12/15
of Government to have the same
registered, and they recommended
that on the payment of arrears
at 1/2 Pagoda per Carum from the
said date, Grants be issued to
all applicants whose Title Deeds
are of an age antecedent to July 1794
and that the same be refused
for all enclosures made without
the sanction of Government sub-
sequently to that advertisement.
This refusal, it is supposed, as
the Government are in the position
of Chief Landlord, would be
equivalent to an Ejectment.

But see Para
10

As an answer to the above
is for the coming in the records at
the Government Office.

8. On the 16th May 1800,
the Board having reported to Govern-
ment the existence of a great variety
of Titles to land prevailing in
Black Town, the difficulty in
ascertaining

ascertaining the rights belonging
to each person and the encroach-
ments on the rights of the Company,
the Government (by the same follow-
ing) directed the Board as follows.

A A Register of all
holdings to be established in the
Board's office, with a record of all
Title Deeds.

B Regular Certificates
to be granted to all who asked
for them either in lieu of former
Title Deeds, or where the possessor
may have occupied the ground
without any.

C Persons shown to have
been 30 years in undisturbed
occupation of Company's ground
not to be deemed trespassers,
but to be furnished with formal
grant without any payment or
account of purchase money.

D Where encroachments
have

21st August/00

6th Sept/00

have been made within 30 years the
Ground to be sold, a preference or
right of presumption being allowed
the present incumbrant.

9. The Board are not
well pleased with these terms, they
depreciate them as unnecessarily
liberal, and deplore the loss of
revenue, which will arise from the
limitation of the prospect. The
Government, however, adhere to their
former resolutions. They still think
the severer scrutiny impolitic. To
prevent future abuses, they will
allow the Superintendent of
lands a commission of $2\frac{1}{2}$ per
cent on all sales.

10. On the 27th October
in the same year the Board again
bring before Government the subject
discussed in their letter manuscript
of the 1st June/99. The Government on
this occasion lose no time in replying.
On the 31st idem they record their opinion
and

and give their orders in the whole
subject as under.

A They agree with the
Board that no Bill of Sale what-
soever can exempt the incumbent
from the payment of Quit Rents
All such Title Deeds both within
and without Black Town should
be at once called in, and grants
and certificates be granted in
lieu thereof. A Grant of the ground
is more than one. Causing about a Cer-
tificate, if under

B The Board therefore
will consider no ground exempt
from Quit Rent unless under a Govern-
ment grant specifically exempting the
holder from such acknowledgment
In each case a fresh Certificate
to be issued on the same terms.

C Henceforth the grant
of Government Certificates of the
Board shall be the only Title Deeds
in force.

Approved

Note. The 13th
state that in two
villages only, land
extending to 1100
acres and assessable
at the usual rate
of 1/4 of a Rupee per Ch.
at 1500 Pags, has
been so enclosed.

15
16/2/5
D Approval of the Board's
suggestion to demand arrears of
Quit Rent from all Proprietors of
Gardens who have neglected obedi-
ence to the repeated notifications
of Government requiring them to
take out grants from the period of
of enclosure. But in no case are
the arrears to be demanded for any
period antecedent to 1st January/54.

Nothing further comes
on record till the year 1812. The Board
then, October 5th, lay before Government
25 applications for grants received by
them thro' the Collector of Bellary.
In one of these cases it was reported
that payment of Reserved rent had
been resisted on the plea that the
present proprietor was in possession
at the time that the same became
due. "The stipulation it appears
was heretofore considered a mere
form and its fulfilment never
required

explained in a sub-
sequent letter as the
rent payable every
third year.

"Required" The Board therefore recom-
mend, that no demand for arrears on
account of Reserves must be pre-
ferred except in cases where no
transfer in the property may have
taken place subsequently to the
expiration of the term of payment.

12. The Government
concurred and directed the Board
to publish a Notification to the for-
going effect at the same time they
enquired whether there would be any
objection to the issue of Grants in future
from the Office of the Collector of
Madras.

13. The Board 22nd July 1845.
report that they have consulted Mr.
Ellis the Collector who has been in
communication with the Law officers
that there appears to be no objection
to the change in the mode of issue.
Some rules in regard to the form of
the New Certificates had been

drawn

one of these was: provided of Mr. Ellis had been informed
designed to secure
both the 30 years' by the Law officers that the Grant
fine and the 99
years fine, and
purchaser the dis-
charge of all fine
due for broken
periods whenever
grants may be
renewed.

16/12
drawn up by Mr. Ellis which the
Board, with some modifications, ap-
proved of. Mr. Ellis had been informed
by the Law officers that the Grant
is a legal and not a Revenue
Document. It will accordingly the
Board suggest, be necessary to guard
against the interference of the
Supreme Court by express Regulation.
The Board are already engaged in
preparing a Regulation for every
branch of Revenue in the Collectorate
and in submitting that Draft they
will enter more fully into the
subject.

14. On the 31st following Govern-
ment informed the Board that a re-
ference would be made to the Law
officers. This was done the same
day.

Two questions were put to the Advo-
cate General.

1st Whether payment could be
enforced

enforced by distraint or by any other
mode of Proceedings warranted by the
Company's Regulations.

Answer. Distraint would be
Lawful. X 2ndly

Supposing the 1st ques-
tion answered in the negative, can the
necessity of resorting to legal process
for payment of quit rent be legally
obviated by following the suggestion
made by the Board to the effect
that a Clause should be added
to the certificate making the ground
and buildings liable to presumption
of quit rent or in any other way?

Answer. No additional Clause
need be added to the printed Grant
now in use.

15. The foregoing opinion was
transmitted to the Board and it was
having been stated by them in their
letter of the 22^d July preceding, that
the Company's Law Officers saw
no

Feb 18/13
no objection to the issue of grants un-
der the seal and signature of the
Collector of Madras, that arrange-
ment was sanctioned. The Board
were to take care that the precise
form of the grant be approved
of by the Law Officers and the
sanction of Government would still
be required before each issue. The
Government, at the same time autho-
rized the publication of the Draft Rules
drawn up by the Collector, provided the
Company's legal advisers should not
see legal objection to the levying
the presumed quit rent or fine from
the person who may be in possession
of the ground when such fine falls
due.

16. In 1828 the subject again
comes forward in a letter from the
Board of Revenue, and is disposed
of by Government on the date noted
1st March/28. in the margin. The Board submit
new

new Forms of Instrument prepared by
the Advocate General and recommended
by him to be substituted for the
Grants and Certificates at present
in use by the Collector of the District.
17. The present Company's
Grant is objected to because while
confessing nothing more intended
by the deed than to lease out the interest
of Government in the ground, saving
all other interests, yet, by the terms
of it an absolute property is asserted
and in practice the applicant has
to give up his title deeds by which
he obtained and holds possession
of his ground, and to consent to their
being cancelled. Thus done, he is
permitted to take out his Grant
"In fact he gives up his right
to Government, and receives it back
with a boon with certain additions
attached to it."

18. This course is highly
objectionable

18
19. 5. Conclusion
objectionable as creating a confusion
of title. No deed of the kind
should be executed by Government
except when a party is in possession
under a good title. Then the Govern-
ment may issue their Instrument
confirming the possession, so far as
the Company is concerned, in
consideration (a) of the good title
aforesaid, and (b) of a Covenant
on behalf of the party in possession
to pay a yearly quit rent as a con-
sideration of the Government interest
in the ground, it being provided that
Government may distrain in default
a counterpart to be executed by the
party and lodged with the Collector.
19. Form A is adapted to the case
of an original purchase from Meera-
sidars. Form B to the case of a pur-
chase or transfer from an intermediate
possession.
Both these Documents were
to

i.e. the share of
the produce of the
land due to Govt.
as Chief Proprietors.

to be sealed with the Company's seal.
and neither is there any notice
whatever of the time at the end
of 30 years or of that tenable period
past lease at the end of 99 years.
In fact no period is assigned
for the expiry of the lease.

20. Form C is a form of Petition
to be presented by parties on succeed-
ing to property to the Collector, and
Form D is the recognition by the
Collector of the receipt of such
petition. This document is not
sealed with the Company's seal.

21. Government approved 7/5/28
these Instruments and directed
they should serve in lieu of those
heretofore in use.

22. Four years afterwards
the Board discovered that in the
interim the Collector has been
affixing his own seal to each
Certificate. Government authorize
the

Condensing 2/5/35

the Collector in future to send the
Documents to the Government Office
to be sealed.

23. On the 22nd August

1853 the Board submit their opinion
the general question as to the ma-
-difications which may be made
at the present date in the
forms of these Certificates. They
observe that the provisions of Act
XII of 1851 "an act for securing"
"the Land Revenue of Madras" ren-
der it unnecessary to amend the clause
providing for Objection. They think
too that the Collector's seal may be
affixed to the Document in lieu of
the Government Office seal belong-
ing to the East India Company.
The only reason for the use of the
latter has been the fact of the
recital of the Deed referring to
it. To meet this they propose to
score out so much of the recital.

Government

24. Government concur gene- 4th Oct/53.
rally, but resolve to forward the
question of the seal to the Advocate
General. They would not however
send out any part of the Deed so
long as any copies of the old
forms are yet in store.

25. The Advocate General 7th Oct/53.
replies that as a general rule, the
Seal of the Collector would not
bind the East India Company,
but he sees no objection to its use
in lieu of the Company's seal "if
the Governor in Council shall
"make an order authorizing the
"Collector to do so."

26. This Order was
made accordingly in Executive Council
of Consultation under date the 22nd
idem.

/ Sigs J. H. Carmichael.
26/3/57

Note

20th 10
27/11/55
Note. In 1855 Government
after a correspondence with the
Collector of Madras the Board
Revenue and Mr. Sydney Smith
the Advocate General moved the
Honorable D. Elliott to propose a
Bill for supplying a defective
act xii of 1851 aforesaid. That
act contained no provision for the
sale of the land in the realization
of the revenues of Madras. The
Advocate General in his letter 11th
March/54. objects to the forms ap-
proved of in 1828 under the advice of
Mr. Compton then Advocate General
for Government grants and certifi-
cates for lands. They appeared
to him to commit the Collector to
an inquiry into the title of the
party in occupation and also to
contain a ratification on the part
of the Company of the procedure
by

P 421/57

by which the land has come into
the possession of its present holder.
This objection was brought to the notice
of the Honorable D. Hall with an
intimation that the inconveniences
alluded to had never once been felt
during the 26 years. Mr. Advocate
General Compton's form had been
in use.

/ Sd/- J. H. Armistead

/ True (copy)

Sd/- J. H. M.

Chief Secretary

22nd May/55.

J. H. M.

W. H. M.

22/5/55

Political Department

N^o 364

Extract from the Minutes of Consultation
in the Political Dept. Dated 24th April 1857

Read again letter from the
Government Agent at Chhapra dated
27th December 1856 N^o 159.

Read also the following papers
Letter from the Govt. Agent at Chhapra (Recd. enter 9th January 1857)
Memo. by the Dy. Secy to Govt (— " — 26th March 1857)

1. Shortly after assuming
charge of the Duff of his Highness the
late Nizam of the Carnatic, D^r Balfour
brought to the notice of Government the
existence of certain Deeds, whereby Go-
vernment had conveyed to the Nizam,
"their heirs, Administrators and Assigns,"
certain lands within the Presidency
limits on certain terms.

2. These Grants were D^r Balfour
said merely 99 years leases on a
Quit Rent, resumable or not at the
expiration of that term. Taxes are
payable

payable every thirty years; houses must
be built on the land and kept in
repair: the lessee is not to sub let
the premises to persons not under
the ~~license~~ of the Company or in
any way hostile to them. And at
the expiration of 99 years, on pay-
ment of a fine of 100 Pagodas, then,
"this Lease shall and may be re-
newed for a further term of 99
years upon such terms and con-
ditions as may be deemed reason-
able."

3. Dr. Balfour believes that
these periodical fines and their
rights in reversion have been
heretofore neglected by Government, the
first advisedly, and the second unwittingly,
and he recommends a scrutiny.

4. In reply he was requested
to submit a list of the leases with
full particulars, and he explains
that his letter had reference, not
only to the Chepauk grants (Copies
of which can be had, if desired)
but, to the whole of the Building Grants
given

7 Jan'y/57

9th idem

22/10
"given by Government, for which the Annual
Dut-rents are regularly demanded and
paid; but neither the 30 years' fines nor
the 99 years' fines have ever in any
case, so far as I can understand,
been even asked for."

5. It appears from the Records of
the Government Office that these leases
the terms of which have been correctly
described above were first granted
in the year 1774. ~~Temporary~~ Governor
Alexander Wynch. The number on the
roll is 1366. Some are for land in the
Mofussil Cantonments and Stations,
but the major part are for building
sites in Madras itself. The Governor
took a lease, so did Sir Hector Munro
and many others.

6. The grants here alluded to
were in the old form which has not
been in use for the last 30 years. The
more recent forms introduced in 1828
do not contain the stipulation for the
30 or 99 years fine. As regards the old
grants the first of these conditions
would seem never to have been
regularly

7 The Right Honorable the Governor in Council would however wish to have some further information in respect to these grants. He resolves therefore to refer to the Government Agents' letters and the Memo of Correspondence drawn up by the Deputy Secretary to the Public Department, in view to the Revenue Board being called upon to procure lists of the grants of this description still extant for lands either at Madras or in the Provinces, with explanation as to the nature and extent of the property held under each of them, what fines have been paid and when not paid, the circumstances under which the demand was intermitted, with any other particulars that may be ascertainable. The Government Agent will also be requested to submit a list of these grants held by the Carnatic Sircar, with similar information in respect

True Extract

107 J. G. H.
Chief Secretary

S

The Revenue Department
with copy of Agents letters & of the Memo
by the D^r Secretary.

By Raymond

С. М. Князев

1872/100
 19/10/57
 7-12-57

25/4/57
 25/4/57
 25/4/57

1872/100
 19/10/57
 7-12-57

Revenue 1857 Dep. art.
 Con: 5th May.

No. 421

Extract from the Min.
 of Cont. in the Political Dept.

Dated 21st April 1857
 Recd 22nd

1 Encl. w/...
 From Secy. Rev. Bd June/57.
 C. No. 650 in G. 25

Referring certain
 letters from the Govt Agent
 at the Bank, & the Memo of
 Correspondence drawn up
 by the Secy to Govt, in
 view to the Rev. Bd being
 called upon to procure list
 of grants therein described,
 & which are still extant
 for lands, either at Madras
 or in the Provinces, and
 passing certain remarks
 thereon.

Extract from the Po. of the B. of
 Secy. of the Land 1857

With our order.
 No. 1,15. 5th May L