

## MADRAS RECORD OFFICE.

Government of Madras.

*Revenue* DEPARTMENT.

|                        |            |               |
|------------------------|------------|---------------|
| G.O. No.               | <i>961</i> | Press<br>Mis. |
| Dated <i>22nd July</i> |            | <i>1859.</i>  |

Not to be folded or roughly handled*961*

*Proceedings of the Madras Government Revenue Department,  
from 16th to 22d July 1859.*

No. 31. Read the following letter.

From C. W. READE, Esq., Collector of Vizagapatam; to J. D. BOURDILLON, Esq.,  
Secretary to Government R. D., Fort Saint George; dated Vizagapatam, 28th April  
1859, No. 300.

With all deference I would beg to suggest that some manifest be put forth and circulated throughout the Presidency clearly defining the objects and intentions of Government by the Establishment of the Enam Commission.

2. On a subject affecting the rights of so many and whereon much alarm and mistrust has for long existed, it would appear desirable if not politic to enunciate the real purpose of the Commission regarding which otherwise much misapprehension and fear may spread abroad which will eventually prove embarrassing to the Government.

3. I confess myself ignorant of the real and ultimate aim of the Commission, but I presume it is to ratify titles where proved good and to annul them where their validity is doubtful or not sustained. Any way such enquiry after 60 years of our Rule must be calculated to excite alarm and agitation amongst a body of people who feel their interests to be thus jeopardized and placed in a state of uncertainty, and it is to correct erroneous impressions that may gain ground that I would suggest some declaration as to the bona fide motives in view by the inquisitorial system on the eve of commencement.

4. Long before the Enam Commission was organized the subject of the hitherto dealing with the Enams in this District was prominently brought to my notice by a number of influential people and elicited from me, a report of which I beg to enclose a copy for the perusal and information of the Government, and with all respect I would particularly solicit the attention of the Honorable the Governor in Council to this report as well as to the representation of the Petitioners which immediately called it forth.

From C. W. READE Esq., Collector of Vizagapatam; to J. D. SIM, Esq., Secretary to the  
Board of Revenue Fort St. George; dated Vizagapatam, 26th April 1858, No 156.

I beg to submit to be laid before the Members of the Board of Revenue and eventually before Government the accompanying translation of a Petition to my address from a large body of Enamdars (or rent free Landlords) residents of the Survasiddy Talook in this District.

2. The original of this Petition was presented personally before me in open Cutcherry by a deputation of about 70 individuals interested in the question to which it relates, and as that question appears to me of very vast importance involving as it does a consideration of the principles on which the Enam Rules are professedly based I have deemed it a duty to give the subject my best consideration, and I am confident neither the Board nor Government will be insensible to its importance for there are no rights existing which are regarded perhaps with the same jealous interest by the people of this country, and hence proportionate care and caution would seem imperatively called for in dealing with those rights.

3. I have never till now been in a position to express my own opinion on the subject of the "Enam Rules" and never before has the subject been so prominently brought before me. I had always viewed these Rules in their letter as some what arbitrary though I had imagined that their spirit was intended to be liberal and conciliatory.

4. With these prefatory remarks I will proceed to notice seriatim the objections taken by the Petitioners to the present system of treating Enams in this particular district.

5. In para. 3 of the Petition a general objection is primarily raised to the entire Enam Rules framed in 1848 and on the grounds namely 1st that they are contrary to the ancient customs and laws of the country, and 2dly that in their operation they are productive of great distress to the people. In proof of this position the Petitioners in para. 4 adduce the following facts. 1st. That as a general rule in practice Enams are claimed to be resumed by Government and heirship ignored under the rules where no entry happens to exist in the permanent settlement accounts 2dly that even in cases where such entry is found, the continuance of the Enam is fre-

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timents and arguments in favor of the ground they take up, in paras. 5 and 9 of their petition; in the latter para. especially there is considerable ingenuity and subtlety of reasoning displayed, and if I mistake not such as must infallibly have weight. It is my impression that an Enam strictly signifies a grant in perpetuity as argued by the Petitioners whether for service or as charity, and that it is legally alienable unless the contrary be stipulated in the terms of the grant or there exists any thing to show the contrary mind and intention of the original granter.

17. In former days when a grant of land was made for service or for charity or for any other purpose it was usually wholly unconditional save in so far of course as related to the primary object for which the grant was made, and which was ordinarily indicated by the title "service" or "charitable" and resumption was never thought of unless for default of the understood conditions or for any offence rendering forfeiture a fitting penalty.

18. The word "Enam" abstractedly means I believe simply "gift" and nothing else, it answers to our word "Present" and is commonly used by natives of all classes when asking for an acknowledgment of any voluntary service, and if so, as pleaded by the Petitioners, it necessarily carries with it the power of appropriation, in the case of grants of land, so long as the conditions implied in the nature of the grant are fulfilled. Of course on a change of Government the right of the victors to repudiate such title might become a question, but this has never been either our policy or our practice, and it is sufficient to say it was not done. In all our acquisitions in this country, we have ever scrupulously respected all rights and interests existing at the time of conquest, and it is this well known liberality of the British Government in early days that perhaps has suggested the contrast of more recent orders, found to operate so prejudicially on long cherished ties and titles which till now had been regarded as hereditary and irrevocable, while these very orders would appear to violate those principles of toleration and justice which the Petitioners so properly admit have ever marked the administration under which they live.

19. I do not know that I can add force to what the Petitioners have advanced on this particular head. In practice the alienation of Enams is prohibited. The orders of Government of the 18th August 1853 prescribed 20 years as the period of enjoyment under an alienation from the family of the original grantee which should be regarded as conferring on the heir of the deceased holder a claim to the continuance of a lapsed Enam. The orders were subsequently cancelled in the Proceedings of Government dated 20th April 1855 "as being calculated to operate with great harshness on the existing holders," and it is implied that this last order should be prospective, not retrospective, but this liberal view of the question has in practice been frequently departed from, and there are many cases in this District where alienated titles have been altogether ignored, some of 30 and 35 years standing, and in some instances as well as where succession has devolved on females, a life interest only in the next of kin has been sanctioned, while in others again the orders have been peremptory to incorporate such Enams with jeroity or assessed lands by bringing them to the public account; thus affording grounds of grievance because apparently opposed to the liberal intentions of the highest authority, and being therefore suggestive of alarm and mistrust in the minds of others similarly circumstanced.

20. No one will question that many frauds in regard to Enam titles have been committed and that succeeding generations have enjoyed and are still enjoying the fruits of these frauds, depriving Government of considerable revenue to which it was justly entitled, but the time for instituting enquiry into such titles has long since passed; it should have been done soon after taking possession of the country, but if we have chosen, no matter from what considerations, to repudiate such enquiry within a reasonable period after conquest, I do not think that any will agree that half a century subsequently is the time to commence a scrutiny into titles, all that while undisputed and undisturbed. Government I think should now suffer the consequences of their own neglect, and those consequences which only relate to money are after all of little moment in comparison with the weightier consequences from loss of national reputation and by a spirit of distrust and disaffection in the minds of the people arising therefrom. It is a poor argument to advance that might is right and I fall back on the simple principle of long possession as conferring a prescriptive right, and it is one which should I think in all cases of the nature under discussion be scrupulously and rigidly respected.

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21. The relief I would therefore propose is simply to declare that all bonâ fide alienations, found so to be, prior to the promulgation of the Enam Rules which in this Zillah was not till June 1851 shall be recognized and allowed, while all those which on due investigation are ascertained to be really of a subsequent date shall be cancelled and the Enams in default of lineal heirs to escheat to Government.

22. I have thus given my opinion though briefly on the several objections started by the Petitioners to the practical working of the Rules and orders in regard to the treatment of Enams. I think it will be found that in many instances the orders issued in individual cases are opposed to the spirit and intent of the framers of the Rules, and thus have given real occasion for the present representation, and as the subject is becoming one of such deep moment to all concerned, affecting as it does so materially their social position and well being, I have felt imperatively called upon to place on record my own sentiments which are so much in union with those expressed in the Petition.

23. I have not thought it necessary to prepare a list of Enams disposed of by Government in illustration of the points of grievance dwelt on by the Petitioners and exemplifying the truth of what they have stated in furtherance of their fears that under the operation of existing Rules all Enams will eventually revert to the state, and thus involve their descendants in lasting injury from which they naturally desire to interpose a timely check by an earnest and respectful remonstrance, as it would involve considerable labor and the Board and Government Records can furnish the information; nor does it appear my province to suggest specific modifications or alterations to meet the grievances complained of. I have therefore simply confined myself to the points mooted, leaving it for the Board and Government to make such revision of their past orders as shall ensure the relief prayed for, and I trust in expressing concurrence with the prayer of the Petitioners it will not be considered that I have in any way deviated from my duty as the local representative of Government in this Province.

No. 32.

ORDER THEREON, 19th July 1859, No. 961.

Disposed of by the Government order of the 8th Instant, adopting the Settlement of the Enam question proposed by the President.

(Signed) J. D. BOURDILLON,  
Secretary to Government.

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quently disallowed as a right, on the ground that the authority originally granting it is held to be incompetent and 3rdly that alienation by gift, mortgage, or sale, is practically forbidden under the rules, and where Enams have so lapsed from the family of the original grantee, succession is not permitted and the Enam is resumed save in special cases, where as an act of grace only, has it been continued with or without a cuttoobady, but to the life only of the son or other next heir of the last holder.

6. The grievances set forth may thus be classed under the foregoing 3 distinct heads of objection to the Rules in force, and the Petitioners add that their separate Petitions to Government on the subject have failed to meet with attention having from time to time been returned on account of some informality under the Petition Rules.

7. I propose to discuss each of the above 3 points in their connection with the rules and with other orders previous and subsequent to their date which may bear on the subject as well as on the arguments of the Petitioners.

1st. Objection.—That Enams on lapse are claimed to be resumed by Government and heirship ignored in practice under the rules where no entry happens to exist in the permanent settlement accounts.

8. This is the principle which in this district has very generally governed the disposal of Enams so circumstanced on the decease of the last holder. There have been deviations from the Rule it is true, that is, exceptional cases have been admitted where titles have been undeniable, or where the Enam has been proved to be still in the original grantees family, as well also for other causes demanding unavoidable consideration, but the succession in such cases has usually been limited to the next heir with a life interest only, and sometimes even that not without a moderate assessment. That an entry in the permanent settlement accounts offers undoubted proof of title to an Enam may be readily granted, but that the absence of such entry is to be held as proof the other way cannot I think for one moment be conceded. These accounts offered no sort of reliable data for rejecting a claim not found in them, their imperfect nature is matter of notoriety, and it could not well be otherwise when we regard the period they were framed and the fact that no preliminary survey was made; doubtless their object also was misunderstood by many who viewed the enquiry with distrust, while the assertion of claims was wholly voluntary. Besides, at the time this District was entirely under Zemindary management and the jeroyty and Enam lands could only have been defined on a mere approximation derived from the information of Curnums and the best sources then available, thus however carefully prepared, these accounts could never be accepted as an unfailing test of the validity of Enam titles, and this opinion is further confirmed by the circumstance that many Enams have since been recognized on unquestionable titles of a date long anterior to these accounts but which have found no place in them. The Records of our Courts would likewise attest the same thing proving that such Enams have been alienated by sale and mortgage as well as in former years under Civil Decrees. Thus these settlement accounts as they are styled offer no safe test by which to pronounce on such claims, and they should no longer be so regarded. Undisputed possession for 56 years the period which has elapsed since the accounts were made, in itself constitutes an undeniable title which to my judgment nothing ought now to be allowed to set aside. Para. 6 of the petition treats of this part of the question.

2ndly.—That even in cases where such entry has existence, the continuance of the Enam to the family of the deceased is very frequently disallowed because of the declared incompetency of the authority originally making the grant, the title being therefore inadmissible under the Rules.

9. There are frequent cases of this kind, and although the particular Enams referred to are entered in the permanent settlement accounts the absence of such entry in other cases being held to invalidate the claim to succession, exception is here taken to the title itself on the grounds stated, namely the incompetency of the donor or donors, and instances may

be quoted where notwithstanding the Enam is found to be still in the enjoyment of the grantees family, the title has been repudiated and declared invalid.

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10. Paras. 7 and 8 of the petition relate to this point; and the petitioners refer to the avowed opinion of the Honorable the Court of Directors as quoted in para. 6 of the Government Proceedings of 22nd May 1848, Revenue Department, No. 481, in support of their denunciation of this ruling of the local authorities, and long possession which is there laid down as a governing principle in all cases where a title is not otherwise clearly authenticated, appears to be deviated from when such right is set aside on the ground of incompetency on the part of the original grantee. If the ruling power or the Zemindar of the period recognized the grant by those in authority under him, the act of resumption nearly 60 years after the commencement of our own rule on the mere assumed ground that the grant was unauthorized may I think be justly questioned, at all events it is somewhat late in the day to dispute the power of the original granter, in the face of, it may be, a century's undisturbed possession. It is usually quite impossible to ascertain who the original granter really was, while the necessity for producing documentary proof of title has been dispensed with as a condition of succession. Besides, these Enams have already been actually admitted by the Government, their very entry in the accounts and their subsequent uninterrupted enjoyment by the holder until now may be appealed to in proof of the fact.

11. It will not be inappropriate in this place to refer to the Proceedings of Government under date the 24th December 1852, No. 1244 Revenue Department, held on review of a letter from the then Commissioner for the Northern Circars reporting on the attached Enams of the Vizianagram Zemindary in this District.

12. In para. 14 of those Proceedings in allusion to the Commissioners proposal to resume certain Enams on behalf of the Zemindar the Government observe that "they feel themselves bound to express their disapproval of resumptions and the substitution of money allowances (except with the full consent of the parties interested) when there has been long possession such as gives all persons a legal right by prescription" the Government go on. "It would be an injustice such as they could not sanction where such prescriptive right as is recognised by the Hindoo Law may have been in existence by an unquestioned and undisturbed enjoyment for many years or for generations. The Governor in Council could not view such resumption as other than a spoliation which should not be carried out as interfering with the peace of the country for which the Government are responsible."

13. The principle here upheld is that long possession gives all persons a legal right by prescription, and the Government express their disapproval of resumptions where there had been such long possession, and further it was added that the then Governor in Council could not view such resumption as other than a spoliation." It may be presumed then that the principle so emphatically and so justly laid down for governing the disposal of Enams whether of undoubted or of doubtful origin within an independent Zemindary applies with no less force to similar "Endowments" held directly under Government, and with all deference, I would therefore appeal to this liberal though obviously right ruling on so important a question, as that which in my humble judgment, should guide the authorities in dealing with all cases of Enamdars in enjoyment of rent free lands within the Government Talooks; as I merely desire to see enforced what so much accords with my own views and is in fact the only principle that ought to govern the disposal of cases of the kind under consideration.

14. The Honorable Court would however appear to restrict the rights of long possession to the original grantee's family, but the justice of this is I think questionable for reasons which will be more fully discussed in the following paras.

3dly.—That alienation by gift, mortgage or sale is particularly forbidden under the Rules and where Enams, have so lapsed from the original grantee's family, succession is not permitted and the Enam is resumed, save in special cases where, as an act of grace only, Enams have been continued with or without a cuttoobady, but to the life only of the son or other next of kin of the last holder.

15. The question here raised is most important; it affects the whole fabric of the Enam Rules, for if what is asked for be conceded those Rules might almost as well be abrogated at once, and yet on reflection there is great reason in what is advanced by the petitioners in support of their aim.

16. The Board and Government will observe that the petitioners feel very strongly on this point, they have dwelt on it at length and as I think have very ably set forth their sen-

N<sup>o</sup> 300.

Viragapatam Collector's  
Office 28<sup>th</sup> April 1859.

From C. W. Reade Esqre  
Collector of  
Viragapatam

To J. R. Bourdillon Esqre  
Secretary to Govt. Res. Dept.  
Fort St. George

Sir, With all deference I would  
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be put forth and circulated throughout  
the Presidency clearly defining the  
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4. Long before the Enam Commission was organized the subject of the hitherto dealing with the Enams in this District was prominently brought to my notice by a number of influential people

and elicited from me, a Report of which I beg to enclose a copy for the perusal and information of the Government, and with all respect I would particularly solicit the attention of the Honorable the Governor in Council to this report as well as to the representation of the Petitioners which immediately called it forth.

I have the honor to be  
Sir

Yours Most Obedt Servt

Charles H. de  
Collector

J. L. Griffin  
A. J. H. C.

1838

Benevolent  
Society of the  
City of New York  
No. 803

The Collection of

Donations for

To the Society of

the Good Samaritan

of the City of New York

Received of

the sum of

1000 00

on the 12th day of

July 1838

for the purpose of

the purchase of

land for the

establishment of

a hospital for the

poor of the City

of New York

and for the

benefit of the

No. 961

Ordered by the Government

of the United States

to the purchase of

land for the

establishment of

a hospital for the

poor of the City

of New York

and for the

benefit of the

poor of the City

of New York

and for the

benefit of the

poor of the City

of New York

and for the

benefit of the

poor of the City

of New York

No. 31582

July 1838