M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1998	Press Mis.
212 213	
Dated 16 — 10 — 1861.	

Not to be folded or roughly handled

No. 212. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudder Ádálat, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 1st October 1861, No. 162 :—

SIR,

Order of Government, 26th August 1861, No. 1,713, Revenue Department.
Letter from Government Pleader to Government, 28th August 1861, No. 145.
Memorandum from Secretary to Government, 25th September 1861, No. 365.

1. With reference to the Order of Government and correspondence under the dates and numbers noted in the margin, I have the honor to advise that the course suggested by Mr. E. B. Thomas, and recommended by the Board should not be adopted.

2. Many objections to its adoption, on general grounds and principles, present themselves.

3. I would premise, however, that Colonel Cooper did not request that the certificate or "permanent Title Deed" should be altered, his request was merely that the Estate might be registered in the Collector's Office in his name alone as sole proprietor, he forwarding to the Collector as his authority for so doing *a letter* from Captain White his co-proprietor, informing the Collector that he (Captain White) *has* made over all his claim to the Tuttapollum Coffee Estate, to Colonel Cooper. In forwarding this letter Colonel Cooper certainly says *if* it was necessary that any alteration should be made in the permanent Title Deed, he would send it for correction. It is, however, quite clear that no alteration in the certificate or "permanent Title Deed" was necessary, even if it were not improper to make any. I do not, therefore, understand why the Collector should have gone out of his way, and requested the Board's permission to do what he was not asked to do, overlooking altogether that which he was requested to do, viz., to register the transfer from Captain White of his interest to Colonel Cooper, first satisfying himself that such transfer had been legally and properly made.

4. From the term "permanent Title Deed" having been used in the correspondence, I was left in an uncertainty as to the character of the instrument, and I called for a copy of it; for if it had been a Deed, the simple answer would have been that the alteration contemplated would have avoided such Deed, and, therefore, the alteration could not be made. From a perusal, however, of the copy forwarded to me, I observe the instrument is not a Deed, but is more in the character of a certificate.

5. I am of opinion, however, that the instrument should not be altered as proposed. I am not required to consider the various ways in which such an alteration might prejudice or embarrass the holder, or those to whom he might convey the property; for if Colonel Cooper consented to the alteration (although such consent was given in ignorance) he could not afterwards maintain any legal proceedings against the Government for any injury he might sustain by the alteration. My sole duty is to protect the interests of Government.

6. With this object in view, I may state that as a general rule Government should not sanction, nor should any Collector be permitted to make any alteration in certificates after they are once issued, except in cases where some error or mistake has been made, which is immediately brought to notice, and the correction is required to be made before the holder has acted upon the certificate; cases may arise in which exception may be made, but I should recommend that in those cases the advice of their law officers should be sought by Government.

7. I presume that previously to the Collectors issuing these certificates they investigate the title of the applicant, and satisfy themselves, as far as is practicable, that such applicant is really the *bona fide* owner of the land. In the Mufassal, as a general rule, this is very easily accomplished; and if that duty be performed with ordinary care and intelligence, and with the concluding portion of the last proviso, I can hardly suppose a case in which Government would incur any risk.

8. But with the issuing of that certificate a new species of title is brought into existence, (I am alluding more particularly to the Mufassal, where the Patta and Moochilika are the ordinary evidences of title), and if Government were to sanction alterations in certificates as

suggested, or to issue new certificates in lieu, they would be taking upon themselves to determine the validity of titles, which would in many instances involve nice and complicated questions of descent or inheritance, or the genuineness of Wills or Deeds, as also of their sufficiency, and I can foresee that Government might find themselves involved in troublesome litigation, if they were once to allow of such a course as that proposed to be adopted.

9. In determining on the goodness of a title, the length of time for which a holder can show uninterrupted possession forms a principal feature in the consideration, and I doubt not these certificates will in a few years be treated by the Courts as very important evidences of title, if carefully preserved and not allowed to be altered or tampered with; and as the secure tenure of land is a matter of great importance to the well being of a country, the Government have a direct interest in not allowing their officers by any act of theirs to unsettle titles, or even throw a doubt on their stability.

10. The foregoing are some of the reasons for my advising that the certificates should not be altered.

11. There is, however, another point of view in which the subject should be considered, but which does not appear to have entered into the consideration of the Collector or the Board, and that is, if the suggestion were adopted (on the evidence before me) the Stamp Laws might be evaded. In Schedule A S 19 of the stamp Act, provision is made for imposing a duty on all conveyances of property. It is unnecessary for me to enter into any disquisition of whether under Mahomedan or Hindu Law a Deed was absolutely *requisite* for the conveyance of immovable property, as between Mahomedans or Hindus; the case under consideration being a transaction between European British subjects, and it is quite clear that as between them no land can be conveyed but by Deed, and such Deed, if executed after the 1st of October 1860, must be stamped agreeably to the provision of Act No. 36 of 1860.

12. Captain White in his letter says he *has* made over all his claim, &c.; it is, therefore, possible he may have done so by a Deed duly stamped, although Mr. Thomas has not stated such to be the case.

13. But if no such Deed has been produced to the Collector, I would advise that he be instructed to inform Colonel Cooper, that on his forwarding a conveyance from Captain White to himself of the former's interest in the Tuttapollum Coffee Estate duly stamped, if executed after the 1st October 1860, such Deed shall be registered.

14. I presume that as relates to transactions perfected after the 1st October 1860, the Courts will in future require all transfers of immovable property whether between Mahomedans, or Hindus, or European British subjects, to be evidenced by some "conveyance Deed or instrument" duly stamped; but whether such should prove to be the case or not, I advise that prior to registering any transfer of land a "conveyance Deed or instrument" duly stamped should be produced to the Collector.

No. 213. ORDER THEREON, 16th October 1861, No. 1,998.

1. Ordered to be communicated to the Board of Revenue for their information and guidance, with reference to their Proceedings, dated 26th August 1861, No. 1,713.

2. The Board will furnish copies of this letter to all Collectors.

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

transaction between European British subjects; and it is quite clear that as between them no land can be conveyed but by Deed, and such Deed, if Executed after the 1st of October 1860, must be Stamped agreeably to the provision of Act No. 36 of 1860;

12 Captain White in his letter says he has made over all his claim &c; it is therefore possible he may have done so by a Deed duly Stamped; although Mr. Thomas has not stated such to be the case.-

13 But if no such Deed has been produced to the Collector, I would advise that he be instructed to inform Colonel Cooper, that on his forwarding a Conveyance from Captain White to himself of the former's interest in the Tuttapollum Coffee Estate duly Stamped if Executed after the 1st October 1860, such Deed shall be Registered.-

14 I presume that as relates to transactions perfected after the 1st October 1860, the Courts will in future Require all transfers of immoveable property whether between Mahomedans, or Hindus, or European British Subjects, to be Evidenced by some "Conveyance Deed or instrument" duly Stamped; but whether such should prove to be the case or not; I advise that prior to Registering any transfer of land a "Conveyance Deed or Instrument" duly Stamped should be produced to the Collector.-

I have the honor to be
Sir
Your most Obedient Servant.
Wm. Dale
Government Pleader &c.

P.S. Return the paper which accompanied the Proc.s of Govt. under date the 26th August 1861 No. 1713 Revd. Dept.

No 212 & 213.

C 12th October Read 14th

No 1998. 16: October.
With an order

(3) From Govt Pleader Madras
No 2362
To Secretary to Government
Dated 14th October 1861
Recd 16th "

No 162

Enclosure One just read

Advising that the course of altering the Certificate of Late Dead suggested by Mr E. P. Thomas and recommended by the Board should not be adopted.

From Board of Revenue
D/ 11th Sept 62 C No 114

Fort St George
16th Octr 1861
14 Copies
To the Board of Revenue Circ 17
3 " Govt Pleader

No 1998.

Ordered to be communicated to the Board of Revenue for their information and guidance with reference to their Proceedings dated 26th August 1861, No 1713.

2 The Board will furnish copies of this letter to all Collectors

20 " Aug 61 No 303 - 306.
Mad for Sept 61 No 508.