

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1623	Press
396. 397	Mis.
Dated 30. 7. 1862	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
30th July 1862.*

No. 396. Read the following Proceedings of the Board of Revenue, dated 15th July 1862,
No. 4,515:—

Read the following letter from C. DALE, Esq., Government Pleader, Sudder Adalat, to W.
HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated 14th April
1862, No. 70.

SIR,

22nd March 1862, No. 1,913.

I. I have the honor to acknowledge the receipt of the
Proceedings of the Board of Revenue, under the date and num-
ber noted in the margin.

2. Doubtless there is no express provision in Hindu Law which, as a *general rule*, makes it requisite that Deeds should be used for the conveyance of immoveable property; in England in ancient times *Seizin* was the mode in which all land was conveyed. The vendor went on to the land with the purchaser and witnesses. The consideration was paid; the boundaries were defined, and when the preliminaries were settled, a sod of earth was dug, which the vendor gave into the hand of the purchaser in the name of the whole, and left the purchaser in possession; but as population increased, and land became more valuable, and consequently disputes became more frequent, some written records was found desirable, indeed I might say necessary, to perpetuate the evidence of the transaction; hence arose the practice of written evidence being recorded, out of which has arisen the present practice of Deeds. If, however, a party were foolish enough to pay his money for land, obtaining *Seizin* of it, and trusting to substantiate his title by the evidence of witnesses present at the transaction, taking all the risk of their deaths, &c., there is probably even now no actual Law which prohibits a man from so acting, but since the passing of the Statute of Frauds, 29 Chas. 2nd, Chas. 3rd, such a transaction would have the force of Cases at Will only. And with respect to Hindu Law although there is no such express provision, yet in particular cases it is laid down that some written document should be signed by the party dealing with the land; and, as it appears to me, the books evidently contemplate some document evidencing the transaction, while in actual practice, such a course is ordinarily adopted. In Malabar the documents used are somewhat intricate, and I believe they are invariably used in all dealings with land.

3. In the books on Mahomedan Law it is laid down that a Deed conveying land is not requisite, *Seizin* alone being sufficient; but in practice Mahomedans usually take some document as evidence of the transaction.

4. Assuming the foregoing to contain a correct *resumé* of the law, it follows that neither under Hindu, nor Mahomedan Law, are "Deeds requisite for the conveyance of immoveable property."

5. If, however, a Deed is used it must be stamped under the provisions of the Stamp Act.

6. And this brings me to the consideration of the question whether Government can refuse to recognize transfers of assessed land between Hindus and Mahomedans, unless supported by formal Deeds duly stamped; under the designation "assessed land." I presume it is intended to point particularly to land held under Patta; there is no decision relating to land in this Presidency so far as I am aware, that has settled the precise interest which a party holding under Patta has in land, nor is it necessary for the present purpose to go into a consideration of that question. It is sufficient to say, that the act of registration is one that a party purchasing land from another, seeks to have done as evidence of his title to the land. I am aware it is equally advantageous to the Government as a means of knowing who is liable to pay the Kist; but in my opinion the Registering Officer has a right to have before him some evidence of the actual transfer by one party of his interest to the other; such transfer may be effected by actual *Seizin* of the land, or by Deed, if by the former, I think that the Registering Officer may fairly require that the evidence of such *Seizin* should be in writing. If any "Conveyance, or Deed, or Instrument of any kind or description whatsoever be executed for the sale or transfer of any land," it must be properly stamped. No particular form or deed is required, as seems to be inferred by Government, in using the term "formal Deeds."

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7. As to whether a party declined to produce any written evidence, the Collector refused to register a transfer (for that I infer is intended to be asked in question) whether Government can refuse to recognize transfers, is a question I cannot answer with any certainty; I, however, am of opinion he could.

8. I should, however, add that in penning my former letter, the object in view was the transfer of land (not held as I understood by Patta-holders by the European gentlemen; and in penning the 11th paragraph, I certainly was not thinking of a mere Patta; which is not a muniment of title, but only an evidence of holding; therefore the Government should consider the effect of requiring a transferee of land held under Patta, to produce evidence in writing of the transfer of such land to him, would be to reduce the value of such land by clogging it with an unacceptable condition. I do not see any difficulty in Government exempting lands held under Patta from any provision they may think fit to promulgate.

1. Ordered that the foregoing letter be submitted to Government, in accordance with the Proceedings, dated 21st March 1862, No. 622.

2. It will be remembered that the subject arose out of the Board's application to the Collector of Coimbatore might be permitted to alter a title deed, granted for certain property on the Neilgherries in the joint names of Colonel Cooper and Captain White, by noting on it the relinquishment by the latter of his interest in the land; the former, who was thus to be recognized as the sole owner of the property in question. Mr. Dale, who was consulted by Government as to the best course to be pursued in such cases,

was of opinion that the course suggested should not be adopted. He stated many grounds of objection on general principles, governed chiefly by a desire to protect the Government against possible future embarrassment and litigation, on the supposition that, even among any alteration of certificates, or issue of new ones, they would be turning on the question of the validity of titles involving, perhaps in many instances, no question of the genuineness, or sufficiency of deed, and so forth. But Mr. Dale's objections, proposed by the Collector, would lead to an evasion of the Stamp Act, in the case of conveyances of property, and assuming that the Government were to transfer of immovable property, whether between Mahomedans or Hindus, or between a Hindu and a Mahomedan, to be valid, if by some conveyance, deed, or instrument, duly stamped, and duly registered, it were proved to be the case or not, the Government would be bound to recognize the transfer of land, a conveyance, deed, or instrument, duly stamped, and duly registered, as valid.

As the Collector of Coimbatore had actually acted on the ground, viz., that the Collector in his District Office that in cases of alienation of land, the holder of a Patta was to be made, without the production of a title deed, or conveyance, in the Patta, and as the Board were doubtful whether the Government, who had communicated Mr. Dale's advice to them, intended to extend the application of the Stamp Act to the Board put the question to Government, in the letter of the 11th January 1862, No. 278; for although they had no objection to the principle of the Stamp Act, where an actual value attached to the land from its quality and assessment, while they considered the rule itself was calculated to afford additional standing to deeds, and they did not entertain some apprehension that its effect at first might be to reduce the value of land, by clogging it with an unacceptable condition, the Government expressed their opinion that the Stamp Act, under the Mahomedan Law, which did not require a deed, or instrument, to be stamped, and duly registered, as valid.

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30th July 1862.*

case of immoveable property, they could refuse to recognize transfers of assessed land between Hindus and Mahomedans unless supported by formal Deeds duly stamped, and requested the Board to confer with Mr. Dale both on this point, and as to the effect which the present duty on conveyances would have on such transfers.

4. Having accordingly obtained Mr. Dale's opinion, the Board understand him to say in the foregoing letter; 1st, that neither under Hindus nor Mahomedan Law, are deeds required for the conveyance of property; 2nd, that where deeds are used they must be stamped under the Stamp Act; 3rd, that he cannot state with certainty whether the registering Officer can refuse, or defend his refusal, to register a transfer on a party declining to produce written evidence, but that he thinks he can; 4thly, that in writing his former letter, he had not in view land held merely on Patta, which is not a muniment of title, but only an evidence of holding; and lastly, that if the Government think it would be reducing the value of Patta land, to clog it with a condition that the transferee, should produce written evidence of transfer, he sees no difficulty in exempting transfers of Patta land from any rule Government may promulgate.

5. The Board are of opinion, that transfers of land should be allowed on any evidence that the Revenue authorities may consider sufficient to prove that the transfer is a *bona fide* transaction between the two parties ostensibly interested. This may either consist of written instruments, between the parties, which would need to be stamped, or of the usual Razinama and Kabulnama. The Government interest in the transaction is confined to the question whether the transferee accepts the obligation as to the Government claims on the land, which such transfer to his name in the register involves. If the Revenue Officer satisfies himself, whether by a personal examination of the parties, or in any other way, that the person in whose name the land was registered and the person to whom it is transferred are consenting parties, he has fulfilled all that the duties of his office demand.

6. With regard to the second point referred to by Government, viz., the effect which the present duty on conveyances would have on such transfers, it appears to the Board that the old practice is not effected by any provisions in the new Stamp Act; for the Act does not provide that immoveable property should not pass except under a written Deed, though when written conveyances are resorted to, they must, under the provisions of the Act, bear the prescribed Stamp.

7. It is clear that both leases executed to a Ryot, and renunciations of land executed by a Ryot are exempted from the payment of Stamp duty.

8. Mr. Dale casually refers to the value of a Patta as evidence of title; and the Board consider that the present Patta answers every needful purpose as between the holder of the land and the Government, the only point with which the latter have any concern. The land-holder's interest and right in the land passes under the ordinary deed of sale, mortgage deed, or such like deeds of a totally different character from the Government Patta, and intended to serve a different purpose. A Pattadar, however, cannot be ousted; so long as he pays the assessment; and if the Government need the land for public purposes, they compensate the Ryot for it at its full value.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, Secretary.

No. 397.

ORDER THEREON, 30th July 1862, No. 1,623.

1. With these Proceedings the Board of Revenue forward a letter from C. Dale, Esq., the Government Pleader. The Proceedings of the Board of Revenue, and Mr. Dale's letter, refer to a question raised by the Board of Revenue, by their application that the Collector of Coimbatore might be permitted to alter a Title Deed, granted for certain property on the Neilgherries, in the joint names of Colonel Cooper and Captain White, by noting on it the relinquishment, by the latter, of his interest in the land to the former, who was thus to be recognized as the sole owner of the property in question.

2. The Government Pleader, to whom this application was referred, saw many objections to the course proposed, on general principles, and further suggested that it would lead to an

Dec 21. March 1862. No. 363. 363
" 10 October 1861 No. 212. 213

Recd 1862. Department.
No. of Govt for July.
No. 2010.

PROCEEDINGS OF THE BOARD OF REVENUE

Dated 14th July 1862.
Despatched. 17th July.
Received. 18th July.

S.D. No. 10633. 20 July
No. 4545.

Submitting a letter from the Government
Pleader, Sudder Adalat, reporting his opinion
on the subject of Deeds for transfer of lands
being executed on stamp papers, with the
Board's views on the subject.

I concur in the views taken by the Board
in Paras 5 & 6. - Many transfers of Pottah lands
take place without any valuable consideration &
solely for the convenience of the 2 parties concerned.
No duty should be paid on such transactions, but
where deeds of sale or conveyance are produced
they should be stamped as required by the Act

Wm.

per Wm.

Received, 20th July 1862.

10326.

W-1623-23
 Proceedings of the Madras Govt.
 30th July 1862

Read Proceedings of the Board
 of Revenue dated the 15 July
 1862.

With these Proceedings the Board
 of Revenue forward a letter from
 C. Dale Esq. Melgort Pleader.

These Proceedings of the Board
 of Revenue, and Mr. Dale's
 letter, refer to a question

raised by the Board of
 Revenue ^{by their application} ~~in a petition~~ that

the Collecta Affinibatori might
 be permitted to alter a

title deed, granted for certain

property on the Melgherries,

in the joint names of Daniel
 Cooper and Captain White,

by noting on it the relinquish-
 -ment by the latter of his
 interest in the land to the

case of immovable property they could refuse to recognize transfers of lands. Hindu and
 Hindus and Mahomedans unless supported by formal deeds duly stamped and registered.
 Board to confer with Mr. Dale both on this point, and as to the effect which the present duty on
 conveyances would have on such transfers.

4. Having accordingly obtained Mr. Dale's opinion, the Board are of opinion, 1st, that in the
 the foregoing letter; 1st, that neither under Hindu nor Mahomedan law, an deed is necessary for the
 the conveyance of property; 2nd, that where deeds are used, they must be stamped under the Stamp
 Act; 3rd, that he cannot state with certainty whether the registering Officer can refuse, or whether
 his refusal, to register a transfer on a party declining to produce written evidence, that he
 thinks he can; 4thly, that in writing his former letter, he had not in view land held merely on Put-
 tah, which is not a muniment of title, but only an evidence of holding, and lastly, that if the Gov-
 ernment think it would be reducing the value of Puttah land, to clog it with a condition that the
 transferee should produce written evidence of transfer, he sees no difficulty in exempting transfers
 of Puttah land from any rule Government may promulgate.

5. The Board are of opinion, that transfers of land should be allowed on any evidence that
 the Revenue authorities may consider sufficient to prove that the transfer is bona fide transaction
 between the two parties ostensibly interested. This may either consist of written evidence
 between the parties, which would need to be stamped, or of the usual Rizmuna and Karamana.
 The Government interest in the transaction is confined to the question whether the transfer ac-
 cepts the obligation as to the Government claims on the land, which is a matter for the Revenue
 the register involves. If the Revenue Officer satisfies himself, whether by a person's evidence, or
 of the parties, or by any other way, that the person in whose name the land was transferred, and the
 person to whom it is transferred are consenting parties, he has fulfilled all the conditions of his
 office demand.

6. With regard to the second point referred to by Government, viz, the effect which the
 present duty on conveyances would have on such transfers, it appears to the Board that the
 practice is not affected by any provisions in the new Stamp Act. For the Act does not require that
 immovable property should not pass except under a written deed, and even if it were so, they
 are so far removed from the provisions of the Act, that the present duty on conveyances

7. It is clear that both leases exempted to a Ryot, and remissions of land exempted to a
 Ryot, are exempted from the payment of Stamp duty.

8. Mr. Dale casually refers to the value of a Puttah, and states that the present Puttah answers every needful purpose as between the holder of the land and
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 purposes. A Puttah, however, cannot be sold, so long as he pays the assessment, and the
 Government hold the land for public purposes, they compensate the Ryot for the full value.

(A true Copy and Extract.)

F. A. J. A. C. Esq. Acting Chief Secretary to Government.
 Government of Madras, Government of India.

land, a conveyance, deed or
instrument duly stamped shall
be produced to the Collector."

This opinion was circulated among
the Collectors, and the Collector
of Bombay published a
notification in his district Gazette,
that in cases of alienation of
land by ^{sale} mortgage, or gift,
no change of Puttees was to be
made without the production
of a stamped deed of conveyance
between the parties. -

The Board being doubtful
whether the Govt. ^{intended} to enforce
an application of the principle
enunciated by the Govt. pleader,
~~last~~ ^{last} ~~agreed~~ ^{agreed} instructions
~~referred to~~ ^{referred to} ~~the Govt.~~ ^{to Govt.}
in their letter of 11 Jan'y. 1862.

stating that although the rule
would undoubtedly afford
additional stability to dealings
in land, they nevertheless
apprehended that its effect
at first might be to reduce

That within under Hindu
the Hindoo are
redesigned on the Hindoo
Hindoo

The Board in their
Proceedings

[illegible]

conveyances would have
on such transfers, the Board
are of opinion that the old
practice is not affected by
any provisions in the new
Stamp Act. - as that act does
not provide that instruments
properly should not pass cash
under a written deed,
although written conveyances
require the stamp prescribed
by the act for such documents.
It is also clear that both
leases executed to a Pyot,
and renunciations of land
executed by a Pyot are
exempted from the pay-
ment of stamp duty. -
The Government concern
in the view taken by the
Board in the question
under reference, and that
is not above. Many trans-

of Pullar lands late
place within any certain
consideration and to the
same as it is.

The parties are

It is very desirable that
today should be met

in such transactions

in the one hand and
~~the other~~ ~~the other~~ ~~the other~~

to the case provided

and it is a matter

of the same nature

as the other

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162nd 2nd 1802
Boards & Proceedings submitting
Government Pleaders letter
reporting on the subject of
P. 162nd 2nd 1802 of lands
being executed on stamped
paper.

162nd 2nd 1802