

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1032	Press ~~Mis.~~
209-210	
Dated	13 6 1918.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
13th June 1863.*

No. 209. Read the following Proceedings of the Board of Revenue, dated 21st May 1863,
No. 3,013 :—

Read the following Proceedings of Government, dated 19th May 1862, No. 1,102.

(In Cons. 20th May 1862, No. 3,047.)

1. The Board are requested in these Proceedings to report their views on Mr. G. N. Taylor's suggestions in connection with succession to Jaghires and Shrotriems under the Hindoo Law; the object being, as they apprehend, to restrict in some measure the evils arising out of the law of partition, under which valuable properties of this description became inconveniently divided and sub-divided in process of time, while they are often depreciated in value by the disputes and litigation of the co-sharers. Mr. Taylor appears to suggest two courses. In one place he advises a few simple rules for defining the separate right and joint responsibility of the several sharers; and in another, he advocates a law of entail not only for future grants, but to enable existing holders of Jaghires to entail their property at their option, and to devise by will under certain limits, as more in accordance with the spirit of the age.

2. As to future grants, the Board do not see any difficulty. Where Government may hereafter create properties of the description in question, and desire to protect them from the ordinary operation of the Hindoo Law, they can of course couple the grant with such conditions and stipulations as may appear to them good, fit, and reasonable; but in regard to existing properties, the Board much question the propriety of introducing a law of *ex-post facto* application. It was in contemplation in 1822 to introduce a law of entail among the Zemindars; but it was then reasoned, that such a rule was already customary among many, if not all, of the Chief Zemindars, and might be said to be part of the Hindoo or Mahomedan Law. If it were law, any gift, sale, or other transfer, in violation of that law, could not be recognized by the Courts or Officers of Government; and no new provision hence appeared necessary. If it were not the law, and never

Act No. XVII of 1814.

was law, it could not be then made so, for that would be an infraction of the rights pledged, under the faith of Government, by the deed of permanent settlement.

* Sir T. Strange, Vol. I, pages 198 and 208.

made applicable to the cases of land specially granted to maintain the rank and dignity of a family, and to Zemindaries held under grant from the Government and renewed to the eldest son.† It is a law upheld

by the Courts, and most willingly adhered to by the proprietors. The natural desire of an ancient Zemindar, or one of high descent, is to uphold his dignity. He takes to himself the title of Rajah when it is not due; and Kingdoms are avowedly not divisible property. Nothing but his own act can break up his Rajahship. His own extravagancies may lead to the dismemberment of his Talooks, either in payment of his debts to private individuals, or of revenue arrears due to the State; but his Estate, if unencumbered, descends intact and undivided to his eldest son.

4. When the Permanent Settlement Regulation declared every Zemindar at liberty to dispose of his property in such a way as he might think proper, it is also declared that he was not absolved from the obligations of his own law. If, therefore, alienations of Zemindary property have in some instances been made, either by sub-division by the Zemindar in favor of part of the family, or under Decrees of the Court for a division, or under any other circumstances than sale for the payment of arrears of revenue or private debts, then in all such cases either the particular Zemindary, where such alienations have been made, is not subject to the law of hereditary undivided succession, or the alienations have been actually void and of no effect, because repugnant to the Hindoo Law; and every heir whose Estate has been diminished, not by sales for arrears of revenue or debt, but by alienations of other kind, may, if he can prove that the law of undivided succession holds in his Zemindary, demand the annulment of all such transfers and the re-annexation of the dissevered portions of the hereditary possessions.

Members

*Proceedings of the Madras Government, Revenue Department,
13th June 1863.*

5. Although there is no declaratory law in regard to the alienation of Jaghires and other such like Ináms, yet where, by frequent partition, these Estates have for generations been divided and sub-divided, the Board believe it would be the wisest policy to give to each holder of a sub-division a clear title, and leave him to pay individually his quota of the Government demand. They see no benefit likely to arise from attempting to keep up a semblance of entirety, when the division has really taken place, and been acted on for years. And where sub-divisions have not been allowed, either by the terms of the original deed, or by the rules and law of the family, then the existing law seems sufficient for such cases.

6. Should Government, however, consider that it would be advisable to legislate in some way, to suit the spirit that has grown up of late by the progress of the country, it might answer to extend to all Jaghiredars and holders of large Estates acquired from, or confirmed by, the British Government, the provisions of the Bill now before them for enabling Hindoos to deal with disposable property by will or otherwise as they please. The heir-at-law would then be the nominee of the Jaghiredar to the exclusion of all others. In this view of the case, it would perhaps be desirable to recognize by law all present divisions of Estates, and to issue Sunnuds for each with the power of entail.

(A true Extract.)

(Signed) W. HUDLESTON, Secretary.

No. 210.

ORDER THEREON, 13th June 1863, No. 1,032.

1. The Government are not prepared at present to legislate in the manner proposed by Mr. Taylor.

2. They are willing to recognize, formally, divisions of Estates already effected in such case as are referred to in paragraph 5 of Board's Proceedings, if the parties desire such recognition; but each case should be considered on its merits.

(Signed.) J. D. SIM,

Secretary to Government.

Revenue Department

In L. O. 13th

March 1862 No. 565, the

Indian Commission

*I should not hesitate to act
were I perfectly satisfied of
the wisdom of the measure
proposed, but I am not
and I therefore think that
the matter had better not
be acted on till we see the effect
of the rule now before the
Council. W.D.*

*I think too that the
matter may very
well lie over for the
present. J.D.*

*was requested to ex-
port generally as to
the custom which ob-
tains in this country
in regard to succession
to Jaghires granted
as rewards for good
services - viz whether
it devolves solely on
the son of the eldest
male member or on
all the surviving male
members*

members of the family
jointly.

Mr. Taylor reports
that the right of pri-
-mogeniture is recog-
-nized at the present
day only as regards
the "ancient" zamini-
-daries and Pottindas
and that the British
Court had left the suc-
-cession to jagirs and
shrotrams to be regulated
by the ordinary law of
the holders. Mr. Taylor
suggested that a law
of entail was needed
and would be accept-
-able to the people - a
law "unfettered by the
immunities and restrictions
which formerly obtained
in England and affect-
-ing not only future
grants but enabling
present

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present holders of
jagirs and other
considerable estates
of similar character
to entail their pro-
-perty at their option
and supplemented by
a law, as regards other
descriptions of property,
enabling the Shrotr
to devise by will un-
-der certain limits.

Mr. Taylor's sug-
-gestions were for-
-warded to the Board
of Revenue for their
opinion.

The Board state
in reply that as regards
future grants there
is no difficulty as Court
in creating such estates
hereafter may attach
their own conditions
to them but in regard
to existing properties
they

they much question the propriety of introducing a law of ex-post facto application - They add that if Govt deem legislation necessary it might answer to extend to all jaghiredars and holders of large estates acquired from or confirmed by the British Govt - the provisions of the Bill now before the Council for enabling Hindoos to deal with disposable property by will or otherwise as they may please -

Public opinion is much divided on the question - whether

whether a law of entail is beneficial or not - and certainly the introduction of such a law into India - where the equal enjoyment and (at their option) - division of property among all the heirs has always prevailed requires much consideration. I am not myself one of the admirers of the entail system and think the proposed law just one of those things in which it is for Govt to await some unequivocal sign of the wishes of the people before it commits itself to legislation.

I see no objection to the recognition as a general rule of divisions already existing of legally partible estates

restates. It is useless in
such cases to keep up the
appearance of unity but
here also it seems to me that
the initiative should be tak-
en by the parties interested,
the Government merely ex-
pressing its willingness to
consider any reasonable pro-
position that may be sub-
mitted to it.

Very respectfully

J. D. S.

W. H. S.

Revenue Department

N^o 1032.

Proceedings of the Madras Government
Under date the 13th June 1863.

Read the following
Proceedings of the Board
of Revenue.

Reporting the Board's views
on Mr. G. N. Taylor's suggestions
in connection with succession to
Jaghires and Chotriems under
the Hindoo Law

(Here enter 21st May 1863
N^o 3013)

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M. J. R.

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Pro: of the Hon. Secy
of 1832 & June 1863.

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Deputy orders on
Board's Proceedings
relating to the division
of States.

c 10/209 & 210.