

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1461	Press ~~Mis.~~
53-56	
Dated 6-8-19-1863	

Not to be folded or roughly handled

Proceedings of the Madras Government Revenue Department,
6th August 1863.

Read the following:—

No. 53. Proceedings of the Board of Revenue, dated 8th October 1862, No. 6,731.

Read again Proceedings of Government Revenue Department, dated 14th October 1861, No. 1,976, and Board's Proceedings, dated 22nd October 1861, No. 5,819.

Board's Proceedings, dated 19th September 1861, No. 5,087.

Letter from the Collector of Madras, dated 5th October 1861, No. 345, recorded in Board's Proceedings, dated 5th November 1861, No. 6,050.

Read also the following letter from the Government Pleader, dated 7th May 1862, No. 80.

Proceedings of the Board, 22nd October 1861, No. 5,819. 1. I do myself the honor of acknowledging
Do. do. 5th November 1861, " 6,050. the receipt of the Proceedings of the Board of
Do. do. 21st December 1861, " 7,149. Revenue under the dates and numbers noted in the margin.

2. I have experienced some difficulty in advising on this matter, as I observe that "the new form of Certificates were introduced at the instance of the Law Officers of Government in 1854." So far as the records of my office are concerned, I am unable to find that it was at the instance of my predecessor, Mr. Norton, the new form was introduced. I therefore conclude it was under the advice of Mr. Advocate General that such form was adopted, and there is a delicacy in revising work done by an Officer holding a higher position. As however it is competent to Government to submit my opinion to the Advocate General, if desired, I have given the subject consideration and now proceed to offer my opinion for the consideration of the Board.

3. The subject is far from being free from difficulty. The only form in which a *proviso* for re-entry is introduced is the form No. 1. That is a demise or lease from the owner to a lessee; it is in the ordinary form of a lease entered into with the owner of the one part, and the lessee of the other part; and, founded on a sufficient consideration, the parties enter into covenants and provisions with each other, one of which is the owner reserves to himself the right of re-entry on failure by the lessee to perform his part of the contract: such an arrangement is perfectly intelligible and can be enforced. The consideration for the transaction being, on the one hand, the performance by the lessee of the covenants which the owner requires him to enter into, and on the other the demise to the lessee of the ground in question. In the Certificate, however, which has been usually granted by Collectors many of those ingredients are wanting, amongst others there is no mutuality, but particularly there is no consideration. The grantee of the Certificate being (as a general rule) already in possession of the land under some title or other, a right of entry by Government on non-payment of the Kist forming no part of such title, and the granting a Certificate not conferring any real or substantial benefit or advantage on the grantee; hence no consideration passes, which, in my opinion, is required to support such a concession on the part of the grantee.

4. In the form B, I have introduced a provision by which the grantee authorizes the Secretary of State in case of default in payment of the rent to take possession of the premises. In this form there was a provision authorizing the Secretary of State to distrain for rent in arrear, that provision I have not disturbed.

5. The form C, I have altered, making it a Deed Poll, and have also introduced therein similar provisions to those in B authorizing distress and the taking possession.

6. And in the form D, to the statement that the grantee has acknowledged his liability to pay the rent there named, I have added that he has also acknowledged that the Secretary of State has power to distrain, and also to take possession of the premises in the event of default being made in payment of the rent.

7. Similar provisions may be introduced into the other forms, should the Honorable the Governor in Council determine to adopt them.

8. After giving the matter mature consideration no better mode of meeting the wishes of Government strikes me, in the absence of Legislative enactment; at the same time although it is the best mode that occurs to me, I cannot (for the reasons given in paragraph 3) say with any

degree of confidence at I think the provisions could be enforced in a Court of Justice, if their enforcement were resisted.

9. I return the whole of the forms forwarded to me.

1. The doubts raised by Mr. Dale in the foregoing letter as to the possibility of enforcing in a Court of Justice the draft conditions which he proposes to insert in the forms of Certificate granted by the Collector of Madras to occupants of lands in the Presidency town and suburbs have induced the Board to examine the whole matter from the earliest dates to which the records available enable them to trace it, and this examination has led them to somewhat different conclusions from those they originally formed as to the desirability of re-asserting the right of re-entry under the Government leases for land in the absence of any law permitting generally the sale of land for arrears of quit-rent within the said limits and precincts.

2. From Mr. Cunliffe's letter, dated 29th October 1861, No. 357, it appears that 3,613 Cawnies of land in the limits of Madras proper, are held under what are called the "old grants" which are in fact leases for 99 years, renewable on payment of a fine, and which provide for re-entry on breach of the terms by the lessee.

3. Cawnies 939 are held under old documents of various kinds, one of which is an absolute deed of sale by the Board of Revenue under the authority of Government; another certifies that the land referred to in it is held from Government on quit-rent, under a demise for a term of years, or as it is probably more correctly printed in another copy of the same form now existing, and doubts referring to the demise or lease for 99 years, however phrased, and the remaining forms are merely Certificates under the hands and seals of various authorities to the effect that evidence has been produced before them that the parties named are in possession of the lands specified, under the right and title detailed.

4. Cawnies 643 are held under deeds of sale between private parties, which appear to convey no title whatever from Government.

5. Cawnies 2,738 are held on the so-called "New form of Certificate" which was introduced in 1828, and modified in 1851, the original form being under the seal, and signed by the members of Government, while the modified form is under the hand and seal of the Collector.

6. Cawnies 1,055 are in occupation without any documentary title, and the remaining 4,075 Cawnies of land within the same limits are supposed to consist of land occupied by public buildings and for public purposes, and of Porumboko.

7. Two of the so-called "New forms of Certificate" are of the nature of agreements between Government and the parties, in which the Government agrees to receive the expressed rate of assessment, and ratifies and confirms the sale or transfer from the former holder on the condition that the parties shall duly pay the assessment on penalty of distraint for default.

8. Two more correspond with the old forms which certified that certain evidence of tenure had been produced, and further declare that the parties have acknowledged that the quit-rent expressed is due to Government, and have agreed to pay it.

9. The remaining forms are for lands which form part of certain Temple endowments, and in which the Government have no interest.

10. It will be seen from the foregoing that under the existing state of the Law for the realization of Land Revenue in Madras Town, which limits the powers of the Collector to distraint and sale of moveable property, land occupied without any documentary title from Government cannot be sold for arrears.

11. The powers of the Collector are, it is asserted, equally limited under those new forms of agreement, which do not empower Government to re-enter and possess the land, and the question is therefore narrowed to the cases of those lands which are held under the old leases, and for which new Certificates of possession are required by the present holders, for it is manifest that the Collector cannot compel parties not requiring such Certificates to take them out.

12. The point then to be determined is this, apart from the question of a change in the Law. Shall a new form of Certificate, saving to Government the right to re-enter and possess the lands (which right it asserts under the old leases, on breach of covenant) be prescribed for use in all future cases of transfer, where new forms of Certificate have not already been issued, limiting the rights of Government to certain conditions which cannot be extended, without what has been designated a breach of covenant?

13. To decide this point it will be well to record here how these "old grants" or Government leases originated.

14. The original occupation of the present town of Madras is thus described in a paper recorded by the then Government in February 1675-76, and printed at page 44 of the "Notes and Extracts from the Government Records."

Answers to queries addressed to the Government of Fort Saint George by Major William Puckle delegate from the Court of Directors.

3. Why are so many Portuguese permitted to dwell in the English Town and pay no rent, nor any acknowledgment for their houses, whilst many English are necessitated to take houses in the Black Town and pay for the same?

3. The Portuguese and Mestizas were invited hither by the several Agents from our first settling here, and some came with our people from Armagon, and encouraged, and several had money lent them to build upon the open sand under the protection of the Guns which by degrees hath been walled in, they doing the duty of trained bands in watching and warding in times of trouble upon the out-works. They have never paid any rent or acknowledgment, nor taken out any leases. However, if the Honorable Company thinks good to have us require it, upon their positive order we must obey them, but we believe it will be the same thing as to drive them away, for in all these countrys here is no such practice. The Governor and Avaldars very sensible of the benefit of inhabitants, inviting all folks by favours and immunities, and gladly giving ground for houses and gardens to any that will build or plant upon it.

As now in practice at Saint Thoma, where to re-populate, they have promised three years' exemption of taxes, which draws the people from hence again as fast as they came.

4. Why there is no survey made and taken of both Towns with the lands belonging to them, and why those that have built upon the Honorable Company's ground, do not pay any acknowledgment, not a pepper corn, for the ground their houses stand upon, nor have leases with covenants to maintain, &c., and why no register of the names of the tenants and inhabitants aforesaid?

4. The same answer as to the surveys may serve for the proposition number 4. The paddy ground pays rent Pagodas 40 per annum, let out to Cassa Verona at the rate it yielded the three years last before it, and the Agent has several times advertized the people who have gardened up and down the sands to take leases for their more quiet possession, but (serving six already made to the English and others) they seem to be rather willing to let them fall back to sand as they were, which would be of evil consequence to this place, being all on a loose sand where between the scorching reflex of the sun and the flying of the sand, we should be scarceable to draw our breath, which was formerly the cause of great distempers, sickness and mortality, rendering the place very uncomfortable, almost uninhabitable.

15. The state of things thus described, would appear to have continued down to the beginning of the present century, when the Board brought the matter under the consideration of Government with reference mainly to the claims which were put forward, to hold land free of quit-rent to Government, and at their suggestion a Notice was issued calling upon all persons holding land under deeds of any description "excepting the legal grants of the Governor in Council," to surrender such deeds and to take out "legal grants" from Government, failing in which the lands not held under such legal tenure were to be resumed as the right and property of Government.

16. This order would appear to be the origin of the leases now known as the "old grants," and of the deeds of sale by the Revenue Board, who were in the same notice declared competent to issue and register Certificates for spot of ground not exceeding one Cawny, "for the accommodation of individuals possessing that extent only."

17. These forms of grant appear to have been very generally though not universally taken out, and continued in force for some years, with occasional slight modifications from time to time. In 1813, the Collector of Madras was authorized to issue the grants under his own hand

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and seal after the Government sanction had been obtained in each case, and the opinion of the Law Officers was given that arrears of quit-rent could be levied by distraint of the goods found on the premises, regarding which point doubt had been raised on the ground that the grants were *legal*, and not *revenue* documents, and that therefore the quit-rent could only be recovered by a Civil action at Law.

18. In 1822, the Collector forwarded to the Board an opinion of Mr. Herbert Compton, the Acting Government Solicitor, questioning the right of Government to realize quit-rent by sale of chattels, or land, in which adverting to an opinion of Mr. Advocate General Anstruther, that such power was possessed by Government under the grants, he observed that "the question still remained whether the right of the Company to the lands anterior to the grant entitled the Government to make the grant, and this involves the difficulty which has so long prevailed respecting the origin and nature of landed tenure in India." The Board in reply stated that they saw no necessity for agitating the question of the right to sell land in satisfaction of arrears of quit-rent, while they entertained no doubt of the right "to distrain and sell" the personal property of a defaulter for an arrear of the tax which is imposed in commutation of "the right of Government to a share of the produce of the soil," and they observe that "the sale of land for arrears of revenue in the provinces is only provided for by the terms of the permanent settlement, and has been declared by the authorities at Home to be highly objectionable."

19. In July of the same year the Collector again brought the matter before the Board, but the only material point in his letter for the present purpose is that he furnished evidence of the issue of warrant so far back as 1750, for the collection of quit-rent within the walls of Black Town and in the Pettahs, and on default of payment to distrain and sell goods and chattels for the arrears.

20. In 1828, the Board submitted for the approval of Government, the forms of instruments relating to immoveable property in Madras, which had been prepared by the Advocate General (Mr. Compton) in substitution for the grants and Certificates which were then in use in the Collector's Office. They observed that while the grant in form of a lease for 99 years, renewable at its expiry was intended only to lease out the interest of Government in the ground specified, saving all other interests yet by the terms of it an absolute property was asserted on behalf of Government exclusive of every other interest, and superseding every other title, and that in practice an applicant for a grant was required to surrender the title deeds by which he obtained and held possession of his ground, and to consent to their being cancelled, which done, he was permitted to take out his grant or Certificate, thus in fact giving up his right to Government and receiving it back with certain conditions attached to it. They stated that the Advocate General considered both the instruments themselves and the practice under them exceedingly objectionable, and calculated to create a confusion of title, and to render property insecure, and that he was of opinion that no deed affecting property of the kind in question should be executed on behalf of Government except when a party was in actual possession under a good title, and that then the instrument issued should be adapted to confirm the possession, so far as Government were concerned, in consideration of that title and of an undertaking by the party in possession to pay the Government quit-rent, power to enter and distrain in default of payment being reserved to Government, and the rent being accepted in commutation of the Government interest.

21. The forms then submitted and sanctioned for adoption by Government were identical in form with those now in use, the only change in the present practice being that under the permission of Government in 1853, the instruments are issued under the hand and seal of the Collector instead of that of Government. Sanction was at the same time given to exclude the provisions relating to distraint for arrears, on the ground that Act XII of 1851 had rendered them superfluous, but the change was to be introduced only when it might be necessary to print fresh copies of the forms, and the permission appears to have been lost sight of, as the copies forwarded to the Board and running in the name of the Secretary of State for India, contain this passage.

From Government, 7th March 1828.

From Government, dated 22nd October 1853.

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22. The new forms included two forms of grant, one to be used in the case of purchase from Mirasidars, and the other where purchase might be made from an intermediate possessor, a form of representation of title to be received by the Collector from parties succeeding to property containing an acknowledgment that quit-rent was due for the ground, and an undertaking to pay it, which was to be registered by the Collector, and a form of Certificate to be granted to the parties by the Collector setting forth that such representation had been made before him, and stating the amount of quit-rent due on the ground.

23. The old form of representation contained a clause which was capable of being interpreted to mean that the Collector before whom it was made testified to the correctness of the representation, though doubtless intended to testify merely that such representation had been made, and the change in this form was mainly to remove the ambiguity.

24. The foregoing *resumé* of the facts connected with the present instruments shows that from the earliest times of our connection with Madras down to the commencement of the present century, land had been occupied here without any title from Government, although necessarily in the course of years numberless private titles were created by occupancy and use, by valuable improvements, and by transfer from parties possessing such title. That when in 1800, in view of the difficulty of collecting its dues on the land the Government resolved to call in all documents of title not granted by them, and to require possessors of land to take out grants from Government, these grants were issued in the form of a lease reserving right to re-enter and possess the land on breach of the conditions of the lease, and that the surrender of all other documents of title was a necessary preliminary to the issue of such grant, which alone it was declared should be recognized as constituting a legal title, and in the absence of which the land was declared resumable by Government. That these leases were, however, persistently rejected by the Supreme Court when offered as evidence of title, and that after being in use for 28 years, they and the practice under them were deliberately condemned as destructive of security in property, and new forms were introduced, and have since been alone in use, which contain no assertion inferential or otherwise, of the proprietary right vesting in Government, although they maintain their right of Government to a share of the annual produce, and make no provision for recovery of arrears of quit-rent by re-entry and possession or sale of the land, but limit the powers of Government in such cases to distraint and sale of goods and chattels and moveable property generally, to which also Act XII of 1851, restricts the action of the Collector, and which seems to have been the practice from the earliest times on record.

25. It must also be observed that re-entry under the leases could only be effected by means of an action of ejectment.

26. It remains then to consider whether it is advisable under these circumstances, and in this limited class of cases, to institute a new form of Certificate which shall maintain to Government the right to re-enter and hold the land in default of payment of quit-rent which has been declared equivalent to a right to sell the land, and looking to the origin of the leases in which that right was first asserted, to the grounds of their condemnation, to the facts that the acceptance of such new form of Certificate could not be enforced when land is held under other forms of instrument, or without any documentary title whatever, while the want of the power to sell the land is felt mainly in this last class of cases in which pauper squatters are concerned, considering also the tedious process by which the right to re-enter could alone be enforced, the Board see reason to modify their opinion formerly expressed that it is expedient to revive this condition in those cases in which it may be possible to do so in the absence of a change of the law.

Note.—The private instruments of title accumulated in the Collector's Office till 1803, when their restoration to the parties with an endorsement was sanctioned by Government.
From Government, dated 3rd December 1803, paragraph 12.

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27. The question of the expediency of such a change in the law itself is distinct, but may with advantage be considered here.

No. 1,802, Board's Proceedings 22nd August 1853.
 „ 2,639, From Government 4th, in Cons. 17th October 1853, No. 1,115.
 „ 2,811, From Government 22nd Oct., in Cons. 3rd Nov. „ No. 1,193.
 „ 2,259, Board's Proceedings, 27th October 1853.
 „ 3,355, From Govt. 23rd Dec. 1853, in Cons. 30th Jan 1854, No. 1,421.
 „ 1,513, Board's Proceedings 24th July 1854.
 „ 2,102, From Government 24th Aug. in Cons. 7th Sept. 1854, No. 1,000.
 „ 3,172, From Government 2nd, in Cons. 12th Nov. 1855, No. 1,207.
 „ 221, To Government, 25th January 1856.
 „ 1,595, Board's Proceedings 27th February 1856.
 „ 703, From Government 28th Feb., in Cons. 4th March 1856, No. 235.
 „ 1,343, From Government 23rd, in Cons. 30th April 1856, No. 403.
 „ 2,335, From Government 23rd, in Cons. 27th June 1856, No. 537.
 „ 2,249, To Government, 18th July 1856.
 Proceedings of Legislative Council of India, October 1855, page 739
 Do. do. do. page 762.
 Do. do. April 1856, page 193.
 Do. do. March 1857, page 163.
 Do. do. do. page 163.

28. It has been discussed at intervals ever since the issue of the Government grants, but it will be sufficient here to refer to the correspondence that passed from 1853 to 1857, in March of which last year the Bill to provide this remedy was thrown out by the Legislative Council mainly on the objections raised by Sir James Colville, Chief Justice, and by Mr. Peacock that the provision would be a breach of

contract with all holders under the Certificates of 1828, and would inequitably affect the interests of sub-tenants who might have erected valuable buildings on lands obtained by them on a pepper corn-rent from any registered grantee, who might allow an arrear of quit-rent to accrue.

29. It was admitted in those debates and correspondence that under the leases reserving the right of re-entry, the Government in fact possesses the power of sale, and in Mr. Stokes' letter to the Board, dated 30th September 1853, it is mentioned that the actual sale of land for arrears in Madras town, had in one case been authorized, while in several other cases defaulters surrendered their Certificates to the Collector in lieu of payment of the demand against them.

30. It was, moreover, stated by Sir J. Colville that even under the Certificates of 1828, Government could, if it thought fit, enforce its demand against a defaulter to the extent of selling the land, by obtaining a Decree of Court for the amount due, and proceeding in the ordinary course for realization of a judgment debt.

31. It was also admitted by Mr. Peacock that there could be no objection to the reservation of a right of re-entry or sale in all future leases, but it was treated as a fatal defect in the Bill then before the Council that it proposed to give summary powers of attachment and sale of the land against all defaulting tenants of land in the Town of Madras subject to a rent payable to Government whenever the distress and sale of any goods or chattels of the owner or lessee, or of any goods or chattels found upon the land proved insufficient to cover the arrear.

32. It was argued that this involved a positive breach of contract where Government had not reserved, had in fact deliberately and advisedly waived the right to re-enter and possess the land in case of default, as was the case with all holders of land under the new form of Certificates, and that no sufficient cause had been adduced, or apparently existed for seeking legislative sanction to so objectionable an innovation.

33. The amount of Land Revenue assessed on Madras was stated by Mr. D. Elliott at Rupees 66,000, of which Rupees 18,000 belonged to land within the town proper, and the rest 1264 inclusive, was Rupees 35,231, viz:—

On old form grants	Rs.
New do.	22,575
Holdings without grant, &c.	6,591
	6,065

as stated in Mr. Cunliffe's letter to the Board, dated 15th January 1856. In his letter, dated 6th June 1860, the total arrears of quit-rent then due for the six preceding years was stated to be Rupees 32,639, and the arrears for Faslis 1269 and 1270 were Rupees 8,100, and Rupees 10,806 respectively as given in his letter of 6th August 1861.

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34. It was argued in the Legislative Council that the amount as stated was not of sufficient importance to warrant any step which was doubtful in equity, but the Board are not disposed to test the case on this issue. The argument that the rights and interests of sub-tenants would be sacrificed might be met by a provision enabling them in cases of default to take out a separate Certificate for the extent of land in their occupation and limiting their liability to the Government demand on that extent, for although this would involve a charge on them to which they had not previously been liable, the amount would be altogether insignificant as compared with their interest in the land. It must be borne in mind that arrears of more than six years' standing cannot be claimed under Act XII of 1851, so that even if the sub-tenant were held liable for the old arrears, the charge would be comparatively trifling.

35. It may, however, be objected that this course would sacrifice the right of the original holder from Government to his rent from the sub-tenant, but independent of the fact that this result would arise from his own default, the Board consider that this objection should have no weight against the consideration that the liability to be assumed by the sub-tenant for the arrear due by his land-lord to Government, would more than redeem such rent when trifling as was assumed in the case supposed in the Legislative Council, and it may safely be assumed that the difficulty would not be allowed to arise when the under rents were of importance to the Government tenant.

36. The case was argued before the Legislative Council mainly with reference to arrears of quit-rent, but perhaps its most important aspect is when viewed with reference to the encroachments of pauper squatters on unenclosed land which may be required for important public purposes. The pauper holds under no documentary title whatever. He has not even the evidence of holding, afforded by a Puttah, but he is *in possession*, and he pays nothing for his occupation of that to which he has no title. He cannot be ousted save by an action in ejectment. The Government dues cannot be collected from him for he has neither goods nor chattels to be sold.

37. A second somewhat similar case is that in which land unimproved and apparently unoccupied is required for public purposes, when immediately on steps being taken by Government for assuming possession claims are brought forward under pretended or collusive deeds of sale executed by so-called Mirasidars.

38. If the transaction be admitted to be a valid one, and the claim be allowed, Government is compelled to purchase the land at an excessive rate in all probability, but the responsibilities of the proprietor should in equity be enforced on him at the same time, and one of these liabilities is for the payment of quit-rent to Government.

39. Under Act XII of 1851, arrears for six years can be claimed, but how to enforce the claim against your pauper proprietor, when the land itself is not saleable, is a question to which the Act gives no reply.

40. The Law which is now under preparation for disposing of claims to waste land might be adapted to meet many of these difficulties, but it appears to the Board that a legislative enactment which shall provide for the attachment and sale of land in the Madras limit for arrears of Government revenue is in any case a highly desirable measure not fairly open to the objection raised against it in the old Legislative Council, consonant with the practice in other parts of the Presidency, which has never been deemed inequitable, analogous to the law and practice in similar cases in Bombay,* and necessary for the due maintenance of the rights of the State and of the public.

41. The Board resolve to submit copy of these Proceedings to Government with their recommendation that measures be adopted for introducing a Draft Bill for this purpose in the local Legislative Council, which it is presumed is competent to deal with it.

42. In combination with such an Act it would only be necessary to carry out the Order of Government sanctioning the omission from the new form of Certificates of that portion which relates to the realization of arrears by distraint and sale of moveable property.

* See Regulation XIX of 1827 of the Bombay Code.

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No. 54. Proceedings of the Board of Revenue, dated 3rd November 1862, No. 7,271:—
Read the following letter from B. CUNLIFFE, Esq., Collector of Madras, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 31st October 1862, No. 378.

SIR,

1. I have the honor to inform the Board that there are now pending in the Deputy Collector's Office 536 applications for fresh Certificates for property in Madras, and that the delay in granting them caused by the desire of the Board to introduce new forms of Government title, occasions serious inconvenience to many of the applicants.

2. I hope then that they will request that the Act proposed in their Proceedings of the 8th instant, No. 6,731, may be carried through its several stages and passed at an early date.

3. I supposed from the prior portion of these Proceedings that the proposed Act was intended to apply to future Certificates, but from the concluding observations gather that it is to embrace all land within Madras.

4. It seems to me that holders of land under the Certificates issued since 1828 which authorize, on default, the sale only of moveable property cannot legally be subjected to more stringent terms, and that the proposed Act for the sale of the land itself cannot be enforced upon them.

1. Ordered to be submitted to Government in continuation of the Board's Proceedings quoted by the Collector.

2. On paragraphs 3 and 4 of Mr. Cunliffe's letter the Board deem it only necessary to repeat that lands held under the Certificates of 1828 are saleable in realization of arrears of revenue, but that the sale needs to be effected by means of a Civil Suit, and that the Board's proposal merely substitutes the summary process which is available in all other cases of default in matters of public revenue.

No. 55. Proceedings of the Board of Revenue, dated 19th May 1863, No. 2,973.
Read the following letter from the Honorable R. S. ELLIS, C. B., Acting Collector of Madras, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Saidapet, 12th May 1863, No. 159.

SIR,

Much inconvenience being felt by the people from the stoppage of the issue of Certificates for property at Madras, I beg the attention of the Board to the subject, and request that they will be pleased to address the Government again in continuation of the Board's Proceedings No. 7,271 of the 3rd November 1862.

Ordered to be submitted to Government, with reference to the Board's Proceedings quoted by the Acting Collector.

No. 56. ORDER THEREON, 6th August 1863, No. 1,461.

1. The Government are averse to any change in the Law which would affect the rights of persons holding lands under Deeds from them. Having deliberately adopted a form of Certificate in 1828, which deprived them of the right of re-entry, they cannot now recover that right by legislation without breach of their own formal Agreement.

2. But it is not clear to the Government that there is any necessity for giving up the right of re-entry where they already possess it. The larger portion of land in Madras is held on Deeds which expressly reserve this power to Government, and it is on these lands that the heaviest arrears have accrued. It is true that these Deeds were declared objectionable, as asserting an absolute right to the lands on the part of Government, but none have been granted since 1828, and the Government presume that their right to issue them in the terms used, could not,

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from lapse of time, be now questioned. If this be the case the simplest course would seem to be to retain the Deeds in all cases of lands now held under them unless the owners consent to a change of form which shall still preserve this power to Government.

3. As to the new form of Certificates nothing can now be done except to discontinue their further issue for fresh lands.

4. With regard to making land in Madras saleable for arrears of revenue, the Board are requested to submit a draft Act amending Section VII of Act XII of 1851 accordingly, limiting the change, however, to lands not held under the Deeds abovementioned.

5. The Board will take the advice of the Advocate General, through the Government Solicitor, on paragraph 2 of these Proceedings and give the Collector instructions accordingly. They will also consider whether the right of re-entry should not be exercised at once in some case where the arrears have been long withheld as a warning at least to defaulters.

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

re-creating a new

895

Calcutta Aug 12/63

My dear Mr. Lister
In reply to your note
of the 11th Aug 1863 re the
new certificate for the
in Madras & the Agents
there. I think it right
to draw to your attention that
Madras is not within
any province. There is no
difficulty in advising
on the point. & all the
people in general are
glad to be saved
trouble. yet they do not

cc. J. Lister

like being papered over.
It would be a different
thing if both Toronto &
I were generally joined
for limits out of the sides
of the Court instead of
at now having preserved
limits more quite inde-
pendent of the other. I
suppose there is no hurry
up so time can recon-
sider the subject on
his return. After
this I will still write
I should advise Lord

do so. If the power to
re-enter is exercised
within the local
limits it will be better
who will leave to
do it not me.

Yours most truly
Chas. B.

My dear Sir.

Let me know what
you think about this.

Mr. M. may possibly
object to being forced into
a position of concern
his special range viz the
limits of the Sup. Ct. jurisdiction.

You might mention this name
in the Libs. & I have been

advised me on it.

Comm. and

Proceedings of the Madras Government
and the following Progs of
the Board of Revenue of the 18th & 19th May 1861.
No. 1461.

6th Aug. 1863.
The Govt are aware to
any change in the
which would
affecting the
rights of persons hold-
ing lands under
deeds from them - have
deliberately adopted
a form of Certificate
in 1828 which deprives
them of the right of re-
entry, they cannot
now recover that right
by legislation without
violation of their own
formal agreement.

But it is not
clear to the Govt that
there is any necessity
for giving up the right
of re-entry as here the

land in Madras
is held on deed
which expressly
leave this power to
Govt. and it is on
these lands that
the heaviest arrears
have accrued - It
is true that these
deeds were declared
objectionable, as as-
serting an absolute
right to the lands
on the part of Govt.
but none have been
cancelled since 1828
and the Govt. presume
that their right ~~of Govt.~~
to issue them in the
terms used, could
not, from lapse of
time, be now questioned.
If this be the case.

implies Govt.

9

are valid if the
is held under them
unless the owner
consent to a change
of form which shall
still preserve their
power & Govt.

As to the new form
certificates nothing
can now be done
except to discon-
tinue their further
issue for fresh
lands.

With regard to
making land in
Madras saleable for
areas of Govt., the
Govt. are expected to
submit a draft
Act amending Act
of Act III of 1851 and
governing by - leaving
land however

... the ...

above mentioned -

The Bd will
take the advice
of the j^{ts}. Members
on para 2 of the
to give the (C.M. in.
Instructions accordingly.
They will also con-
sider whether the
right of re-entry
should not be ex-
ercised at once in
some case where
the areas have been
long with-held as a
warning at least to defend

L.R.L.

Copied to the Bd of Rev. Right & ...

in place ...

10-10-72
5/7/55
13/9/58
21/3/04

31-3-13.V

19-7-16
10/12/19 ✓

Pro 3 Dec 1803 - No. 464

" 30 Nov 1813 - " 481

" 7 March 1828 - " 4-5

" 4 Oct 1853 - " 21-22

" 22 " " " 26-27

" 23 Dec " " 57-52

" 24 Aug 1857 - " 7-8

" 2 Nov 1855 - " 13-14

" 27 Feb 1856 - " 1-2

" 28 " " " 30-32

" 23 Apr " " 40-41

" 23 June " " 36-37

" 7 Aug 1856 - " 12-13

" 11 Sept 1856 - " 15-16

" 14 Oct 1861 - " 168-169

" 10 Dec 1861 - " 89-90

" 14 Feb 1862 - " 309-310

1253 206

unpreserved

2-11-61

From the Madras Govt
16 August 1861

From Govt. Solicitor in Madras

13 Sept 63 C No. 2107 in

Form No. 13 dated 13 Oct 63 C No. 2585

From B. J. D. 18 June 1863 C No. 2042

10 May 65 C No. 1288

A few forms of certificates

issued by the Collector of

Madras to occupants of lands

the Presidency town and

burbs to be discontinued.