M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1569 Press ~~Mis.~~

273-274

Dated 26-8-~~19~~1863

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 26th August 1863.

No. 273. Read the following Proceedings of the Board of Revenue, dated 4th August 1863, No. 4,865 :—

Read the following letter from C. DALE, Esq., Government Pleader, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 18th July 1863, No. 81.

SIR,

1. With reference to the Proceedings of the Board of Revenue, and the Proceedings of Government passed thereon under the dates and numbers noted in the margin, I do myself the honor of reporting, for the information of the Board, that the Regular Appeal Suit No. 58 of 1861 came on for hearing on the 13th ultimo before the High Court, when their Honors, the presiding Judges, differing in opinion as to the proper construction to be put on the 8th Section of Regulation XXV of 1802, it was intimated that the case would have to be re-argued before a third Judge.

On Proceedings of the Board of Revenue, November 1861, No. 6,140.
Ings of Government passed thereon, November 1861, No. 2,179, Revenue Department.

2. I have, however, been since informed that the Court has passed an order, of which I enclose a copy, by which the Judgment passed by the Civil Judge of Madura has been reversed, and the Suit remitted to the Lower Court to determine the question therein indicated.

3. In their Judgment the Judges of the High Court have enunciated maxims of Law, which, taken abstractedly, nobody having any knowledge of even the merest elements of law would attempt to gainsay. The question, however, is are the maxims thus enunciated applicable to the case under consideration? Have the Judges correctly laid the foundation on which they have raised this superstructure? Is there such a duty imposed by the Regulation quoted as is declared in this judgment? Is it in any part of the Regulation enacted that the Collector *is* BOUND to take the steps necessary "to validate a transfer not subject to the objections which, by the distinct declaration of the Legislature, can alone invalidate it?" Does the Regulation impose on the Collector the duty to take upon himself to determine whether the transfer is subject to any such objections? Is the reasoning on which in the 11th paragraph the Court comes to the conclusion that "the law clearly casts this duty upon him," founded on sustainable grounds?

4. In my opinion the maxims enunciated are not applicable to this case; and in my opinion no such duty as is pointed at is imposed.

5. The Board are aware that before 1849 the decisions of the late Sudder Court were not regularly published. A few of the cases decided between 1805 and 1826, and again between 1826 and 1847 have been printed; and Mr. Prendergast's Civilian's Remembrancer and Vade Mecum refer to others; but with those exceptions the profession has no means of knowing what decisions have been passed except by search among the records of the Court, a most laborious process, and one which necessarily consumes much time. In the works I have mentioned, no decision is quoted wherein a construction of the 8th Section of Regulation XXV of 1802, on the point now raised, is given. The Circular Order of the 17th September 1832 contains a construction of that Section, and in the 5th paragraph it is stated, "It has been ruled repeatedly by the Sudder Court that it is not in the power of any Court of Judicature to interfere with the Registry of lands; that Collectors are answerable that no new registry is made without sufficient proof of a *bonâ fide* transfer; that they alone have authority to perform the registry in the manner, and under the circumstances set forth in the Regulation; and that a registry in other names cannot prevent a party's recovering lands, if adjudged to him by a Judicial Decree."

6. Hitherto the Circular Orders of the Sudder have been quoted as authorities. I am not aware that the weight to be given to them has ever been judicially announced, but they have been respected by the Court. In preparing for the argument, I had imagined that the Circular Order would be considered by the Court as sufficient to preclude them from entertaining the question as one of first impression, but that the Judges would consider themselves bound by the previous decisions (whatever their own individual opinions might be), and that the Plaintiff would be left to appeal to the Privy Council should he be advised that the decisions of the

Sudder were erroneous. I considered the Regulation in connection with that No. 26 of 1802, and prepared myself to show that the rulings referred to in the Circular Order were correct, but I did not search for such rulings among the records. One of the Judges present at a very early stage of the argument by the Plaintiff's Council showed he was with the Plaintiff, and on my quoting the Circular Order, remarked, he hoped that Circular Orders were not any longer to be quoted as authorities. The other Judge asked me whether I quoted the Circular Order as a direct authority on the point, or merely as the result of consideration by the then Judges of the Sudder, whose opinions were entitled to weight and consideration at the hands of the Court as at present constituted. I replied I went further. I decidedly quoted it in that view, but I also quoted it as showing that frequent rulings and decisions had been passed on the point by the Court, and which would be found on search among the records, and I did not suppose that any body would question that the Judges who framed the Circular Order had satisfied themselves that such rulings had been made, and were then in full force, and that in the Circular Order they had not asserted any thing as facts that was inconsistent with truth; I therefore quoted it, and I relied upon it as a direct authority upon the point.

7. When the Judges intimated that the case must be re-argued, I requested the Deputy Registrar to have a search made for all the decisions by the Sudder upon the 8th Section of Regulation XXV. A large mass of papers were collected, and I commenced, with Mr. Wilkins' assistance, a perusal of the papers, &c. I had found two decisions when I was informed the Order now forwarded had been passed, and I did not prosecute my inquiry further; but doubtless there are many more decisions to the same effect.

8. I am not acquainted with the practice of the Continental Courts, but in British Courts and in those of America, the Judges are guided by decisions of their predecessors, until overruled by a higher tribunal, or the law is altered by the Legislature. Such decisions (in the language of a learned author) "become land-marks, by which each Judge afterwards considers "himself bound, and the profession and suitors afterwards steer their course." If it were otherwise, a Judge possessing a strong feeling of self-reliance in his own powers, might be apt to disregard the labor, talent, and experience, of former Judges, and to set at nought decisions passed by them; while on another occasion other Judges might consider the opinions of the former Judges were those by which the question should be decided, and thus a perfect chaos would be established; or, in the words of Blackstone, "It is an established rule to abide by "former precedents, where the same points come again in litigation; as well to keep the scale of "justice even and steady, and not liable to waver with every new Judge's opinion; as also "because the law in that case being solemnly declared and determined, what was before uncertain "and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any "subsequent Judge to alter or vary from, according to his private sentiments: he being sworn "to determine, not according to his own private judgment, but according to the known laws and "customs of the land; not delegated to pronounce a new law, but to maintain and expound an "old one. The doctrine of the law is that precedents and rules must be followed unless flatly "absurd or unjust."

9. I will not venture to say that the question of construction of that Section is free from doubt, but I am of opinion that the construction enunciated by the former decisions of the Sudder would be upheld in the Privy Council.

10. I do not propose entering at any length on the law by which Courts are governed in the construction of legislative enactments. It may suffice in the present letter to say, that words are not to be inserted or left out; that Courts should discover the intention of the Legislature in passing the enactment; that "effect should be given to the intention whenever such intention "can be indubitably ascertained by permitted legal means," but "the Court is not to supply a "meaning by conjecture." It is true the intention of the Legislature is to prevail over the literal sense of the terms used, but the intention must be *expressed*.

11. Taking these rules as my guide, and attentively perusing the Regulation, I am at a loss to discover by what part of Section 8 the Collector is bound to act in the manner laid down

Proceedings of the Madras Government, Revenue Department,
26th August 1863.

in the judgment under consideration. There is no express enactment to that effect, and no such intention is expressed. Moreover, in my opinion, no such intention can be "implied" even were it open to the Court to import such an aid to their consideration. In the Circular Order of the 17th September 1832, paragraph 4, the Judges state, "At the period of the enactment of the "Regulations abovementioned, the Government were legislating between themselves and the "proprietors of Zemindaries, and their view extended no further." And in the 8th Volume of Moore's Indian Appeal cases, page 337, the Privy Council remark, "The language of the "Regulation would seem to apply to questions between the Zemindar and the Government, "and to have been framed with a view of preventing a severance of the Zemindary without "public notice to the Government." This declaration cannot be relied upon as more than a mere dictum. I entertain no doubt, however, that such would be the decision of the Privy Council, should it become necessary for that tribunal to adjudicate on the point. Taking that view of the case, the Legislature would not be open to the observation contained in the 10th paragraph of the High Court's judgment of having "gone through the most unmeaning form." The case is very similar to a landlord who lets a large estate to a tenant at a certain rent, giving permission to his tenant to sub-let, but stipulating that such under-letting should not have any effect as regards himself, unless his permission, or some other form, were obtained or complied with; and that notwithstanding such sub-letting (without permission) the whole of the land demised by the ground landlord should continue answerable for the total rent reserved to him. Such transactions are of constant occurrence in England on estates let out for building; large tracts of land are let to one tenant on which many houses are built; the tenant sells some of these houses separately, and to distinct purchasers, reserving on each a portion of the rent payable by himself. As a general rule the ground landlord is not bound to recognize this sub-letting. He however frequently does so, considering it good policy, and then the portions of the land so sub-let are rendered liable to the payment of so much of the original rent only as is reserved in the lease granted to the purchaser, and not to the payment of the whole of the original rent. But should the ground landlord decline to recognize the arrangement, the purchaser takes from the original tenant an under-lease of the land and house purchased by him, in which is reserved the amount of rent agreed upon between the original tenant and the purchaser, with a covenant from the original tenant to hold the purchaser harmless from the original rent, to which however the land and house purchased remain liable, in common with all the other portions of the land let by the ground landlord. Houses so circumstanced are sold for very large sums, and subsequently change hands without difficulty. They may perhaps not realize so high a price, as they would if not liable to the payment of the original rent, but such transactions are perfectly "VALID," and are "respected by the Courts of Judicature." In my opinion it was precisely such transactions by Zemindars that the Legislature contemplated in framing the first portion of Section 8. The language of that part of the Section is clear and without ambiguity, and clearly would embrace such a transaction.

12. As at present framed, the latter portion of that Section is somewhat ambiguous, or rather I might say renders the Section senseless; the first part declaring that transfers made without the previous consent of Government or of any other authority shall be valid, and shall be respected by the Courts; while the latter part declares that unless the transfer has been registered *at the Office of the Collector* (not registered under Regulation XVII of 1802), and unless the public assessment shall have been *previously* determined and fixed on such separated portions of land by the Collector, such transfer shall be of no legal force or effect. If the assessment on a separated portion is determined and fixed by the Collector PREVIOUSLY to such transfer, "previous consent of the Government" would be conceded, then what effect is left to the first part of the Section? In Mr. Campbell's edition of the Regulations, after the words, "of no legal force or effect," there is a note, "as against Government." Looking at the whole of the Regulation, and reading it in connection with the dicta laid down in the Circular Order and by the Privy Council, as noticed in paragraph 11, I enter ain no doubt such was the meaning and intention of the framers of the Regulation, and if those words had been there introduced, the whole

paragraph would have been consistent and intelligible, and the last clause "nor such transaction," &c., would then form a consistent conclusion to the latter half of the Section.

13. There are other points on which I could enlarge, but I do not consider it necess ·y to do so in this letter. I deem it sufficient to say that I advise an appeal should be made from this judgment to Her Majesty in Council. It is a question of great importance to Government, if the judgment should not be supported by the Privy Council, the question will be authoritatively set at rest; while, on the other hand, if the judgment should be supported, Government, can then consider whether it is desirable to amend the Regulation by legislative enactment.

14. This being an interlocutary judgment, it will be necessary to obtain permission of the High Court to appeal under the 40th Section of the Charter.

15. It is possible that in printing the Regulations errors may have crept in, and I recommend that the original Regulation as passed be looked for and compared with the printed copies. If the prints be correct, I advise that the drafts as also any minutes or notes, &c., by Members of Council, or by the party who drew the Regulation, or the Law Officers of Government, &c., &c., *written at the time*, should be searched for, and sent to me for perusal.

16. The suit is remanded to the Civil Court. I advise that Mr. Levinge be requested to instruct the Government Vakeel at Madura to submit to the Civil Judge, and to argue that under a true construction of that Section the Plaintiff is too late in his application; that under the Regulations, "the public assessment must be determined and fixed on the separated portions of the land by the Collector" PREVIOUSLY to a transfer being made. It may be contended on the other side that the word "*previously*" applies to the last antecedent, which refers to registration by the Collector. If such a position be put forward on behalf of the Plaintiff, the Government Vakeel should submit to the Civil Judge, and argue that such a rule cannot prevail in this case, because the sentence regarding the registration commences with the words "But unless;" while the sentence relating to assessment also commences with the words "and unless," clearly indicating that the framers of the Regulations, in speaking of two distinct acts to be performed by the Collector, intended to refer, as to each of such acts, to the previous part of the Section, which gives to Zemindars the power to transfer their land.

17. It does not occur to me that it is necessary the Collector should put in any evidence, the *onus probandi* on all the points raised lies on the Plaintiff. As a matter of precaution, however, it may be as well, and can do no harm, to put in such of the Proceedings in No. 1 of 1860 as show an adverse claim to the whole Zemindary; also any evidence he may have of the pretended conveyance of 1817, or even *primâ facie* evidence, such as allegations in other suits, of such pretended conveyance may be put in. Care should be taken in watching narrowly the evidence tendered by the Plaintiff, and to object to the reception of improper evidence in the manner I have frequently mentioned to the Board.

ENCLOSURE No. 1.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

13th June 1863.

Present.

The Honorable Mr. Justice PHILLIPS. The Honorable Mr. Justice HOLLOWAY.

Regular Appeal No. 58 of 1861.

Ponnusawmy Taver, Appellant, by J. B. Norton, Esq., and Hon. V. Sadagopa Charloo.

Collector of Madura, Respondent, by J. R. Boyson, Esq., Attorney.

This is an appeal from the decree of the Civil Judge of Madura (R. R. Cotton) in Original Suit No. 6 of 1861.

The Plaintiff in this suit substantially prayed that the Collector, who had refused to register and sub-assess a portion of a Zemindary alleged to have been assigned to him by the Rani Seetapati of Ramnad, might be compelled to do so.

Defendant in a very elaborate answer among other things submitted that the Court has no jurisdiction.

The other grounds it is unnecessary to notice, as they have not at present received any attention from the Civil Judge who dismissed the suit, because the portion which the Plaintiff claimed as assigned to him, had not been registered and re-assessed by the Collector, and because therefore the gift could have no legal force or effect.

The case was argued by Mr. Norton for the Appellant, and Mr. Dale on behalf of the Respondent.

The only question at present before us is, whether the ground taken by the Civil Judge justifies his dismissal of the suit on this preliminary point. It would be a very singular consequence if a Plaintiff, seeking to compel a public Officer to perform a duty alleged to be incumbent upon him in order that validity might be given to Plaintiff's alleged legal right, was prevented from bringing the question to trial, because the act of that public Officer had prevented that legal right from acquiring validity.

The necessity for such cyclic reasoning would alone lead to suspicion of the soundness of the conclusion of the Civil Judge. The determination of the question, however, depends entirely upon the construction of Section 8, Regulation XXV of 1802.

That Regulation defining for fiscal and other purposes the rights and liabilities of Zemindars in Section 8, declares that landed proprietors shall be at free liberty to transfer, without the previous consent of the Government their proprietary right in the whole or in a portion of their states, and that such transfers, if not opposed to Hindoo or Mahomedan Law or to the Regulations, shall be respected by the Officers of Government, and by the Courts of Justice. It is manifest that in the clearest and most specific terms the right of transfer, if not opposed to law, is distinctly given.

It then further provides that unless such alienation has been regularly registered, and the alienated portion sub-assessed, the transaction shall be "of no legal force or effect."

If, therefore, the argument for the Defendant was correct, the Legislature have gone through the most unmeaning form, for it would be open to the Collector to decline either registering or sub-assessing. It has been argued that the meaning is, shall be absolutely void as against Government. The words used are very large, but it is unnecessary to determine whether this narrow construction is or is not the true one, because the previous words of the Section have given to the proprietor and of consequence to his alienee a perfect right to acquire by a transfer not subject to specific objections, a title good to all intents and purposes. On the familiar principle that there can be no right without a remedy, it is manifest, upon the construction of the whole of this Section, that the Collector is bound to take the steps necessary to validate a transfer not subject to the objections which, by the distinct declaration of the Legislature, can alone invalidate it. He is as a necessary consequence bound to determine whether the transfer is subject to any such objections, and if not, he is clearly bound to register and sub-assess.

The law clearly casts this duty upon him, because it has given to a transferer a right which would become positively null unless he performed that duty.

It is a fundamental principle much insisted upon (and illustrated in Ferguson *v.* Kinnoul IX Clark and Fin 251), that where the law casts a duty upon a person which he wrongfully fails to perform he is answerable in damages to those whom his wrongful failure injures.

Nothing is clearer than the duty distinctly specified by the law of performing the act unless there are good grounds for the non-performance, and it follows on the most obvious principles that if the Plaintiff has a right in the present case to insist upon the act which he seeks to compel this public functionary to perform, unless there are grounds for the refusal, and the determination of whether the refusal is a wrong, or whether it has proceeded upon legal and valid grounds, manifestly lies with the Courts of Justice, for it is a most familiar law that where a statute imposes

a duty it, without express words, gives an action for the failing to perform it, and for wrongfully performing it,

The result is that the judgment of the Civil Judge will be reversed; that the suit will be remitted to the Lower Court to determine the question indicated in this Judgment after a full hearing of the parties, and of such evidence as they may choose to produce.

Board's Proceedings, dated 23rd July 1861, No. 3,934.
Government Order, dated 24th idem, No. 1,474, Revenue Department.
Government Order, dated 27th idem, No. 1,504, Revenue Department.
Board's Proceedings, dated 23rd September 1861, No. 5,137.
Board's Proceedings, dated 8th November 1861, No. 6,140.
Government Order, dated 19th idem, No. 2,179, Revenue Department.
Also
Board's Proceedings dated 18th September 1861, No. 5,070.
On a Memorandum from Deputy Secretary to Government.
Government Order, dated 8th October 1861, on Petition No. 1,941 of 1860.

1. Ordered that the above papers be submitted to Government, with reference to the correspondence noted in the margin, and that copy be also communicated to the Collector of Madura.

2. It will be in the recollection of Government that the Ramnad Zemindarni and her nephew sought to have a portion of the Estate registered in the name of the latter, with its due proportion of Peshkush, on the ground that it had been bestowed on him by the Rani; and that the then Acting Collector, Mr. Hathaway, refused to comply with the request, because in his opinion the Rani was not competent to make any such alienation to the possible detriment of the reversionary right of Government as *ultimus hæres*, she being a childless widow. In this decision he was upheld by the Board, and eventually by Government on appeal.

3. Ponnaswami Taver, the Rani's nephew, thereupon filed a Suit in the District Court to compel the Collector to apportion the Peshkush and to register the share, and the defence of the Suit was sanctioned on the above ground, as set forth by the Government Pleader.

4. The Civil Judge rejected the Suit on the ground that as that share or division of the Estate which the Collector was called upon to sub-assess and register, had not been already sub-assessed and registered, it could not form the subject of judicial investigation under the restriction imposed by Section 8, Regulation XXV of 1802.

5. The Court did not take into consideration the grounds of the Collector's refusal to sub-assess and register the divided portion of the Estate.

6. Plaintiff presented to the High Court a Special Appeal from this decision, and the Judges have now set it aside, and remanded the suit to the original Court for re-hearing and a decision as to whether the Collector had good grounds for his refusal, which inquiry will bring under consideration the main grounds on which the Board originally proposed to base the defence.

7. The High Court have ruled that a "Collector is bound to take the steps necessary to "validate a transfer not subject to the objections which by the distinct declaration of the Legis- "lature can alone invalidate it," as particularized in the Section and Regulation above quoted. And the Court go on to say that the Collector "is as a necessary consequence bound to determine "whether the transfer is subject to any such objection; and if not, he is clearly bound to register "and sub-assess."

8. The section which has been above referred to, states that proprietors of land shall be competent to transfer without the previous consent of Government their proprietary right in the whole or any portion of their Zemindaries, and "that such transfer of land shall be valid and shall be respected by the Courts and by the Officers of Government if not repugnant to the Mahomedan or Hindoo Law, or to the Regulations." But the same Section further enacts that unless such transfer of land shall have been regularly registered at the Office of the Collector, and unless the public assessment shall have been previously determined and fixed on such separated portions of land by the Collector, such transfer shall be of no legal force or effect.

9. Section 2, Regulation XXVI of 1802, provides that Collectors shall keep public Registers for the registry of land within their Districts paying revenue to Government, "and shall enter all

Proceedings of the Madras Government, Revenue Department,
26th August 1863.

"transfers of land from one proprietor to another;" and Section 3 of the same Regulation declares that unregistered transfers shall not be valid in the Courts of Justice.

10. Regulation XXV of 1802 was enacted as pointed out by the Court for fiscal purposes among others, and the protection of the revenue was evidently a main object in view when the Legislature enacted that no transfer should be valid unless previously registered by the Collector.

The question for decision by Government is whether, in their opinion, the Regulations absolutely exclude from the consideration of the Court, the grounds on which a Collector may refuse to divide the fixed assessment on a permanently settled estate, or to enter separated portions in his Register; and, if so, whether they are disposed to maintain that opinion by an appeal to the Privy Council.

11. The Board are disposed to think that the law has intentionally and absolutely deprived the Courts of jurisdiction in any such cases, for reasons connected with the security of the public revenue as a primary and over-ruling consideration in questions connected with Zemindary tenures and the permanent settlement; for that measure was in fact a purely financial one, although it is often asserted and very generally supposed to be one connected with real property in land.

12. This fundamental error, which is so destructive of the rights of the real proprietors of the occupied land of this country, and which has been productive of infinite mischief, appears to the Board to be at the root of the High Court's objections to the plea of non-jurisdiction.

13. Were a Zemindar really vested with a proprietary right in the soil, the objections raised by the High Court would doubtless apply with great force. But when once it is recognized that the Zemindar is merely a middleman put in by Government for Revenue purposes, and that as Zemindar he possesses a mere contract interest in the collection of the Land assessment, all the difficulties in the way of admitting the literal application of the Regulation vanish.

14. It is perfectly reasonable to suppose that the Legislature deliberately resolved to reserve strictly for Government the right to admit or allow transfers or sub-divisions of the delegated authority which they conferred on an individual for the collection of the revenue, and that shifting of responsibility which such transfers or sub-divisions necessarily involve; and that this right may co-exist with the right of a Zemindar to transfer a portion of his interests in the Land Revenue to others, so that such transfer shall be valid as between the parties, though not valid as between the Zemindar and the Government, unless the transfer shall be previously registered in the Collector's accounts.—(C. O. S. U. 17th September 1832).

15. The Board are of opinion that both on Revenue considerations, and also in order to maintain the rights of those who are really proprietors in the soil, it is expedient that the question at issue be referred by appeal for the decision of the Privy Council.

The question is of great importance to Government, and of equal importance to the people, so far as it involves the real nature of a Zemindary Estate, on which point there is often much misapprehension from the loose and inaccurate wording of the Revenue Regulations both here and in Bengal, and from the disregard showed by the framers of those Regulations to the proprietary rights of the Ryots or occupants of the soil.

No. 274. ORDER THEREON, 26th August 1863, No. 1,569.

1. The Governor in Council has given careful attention to these papers, but is unable to concur in the opinion of the Revenue Board and Government Pleader, that an appeal should be at once made from the decision of the High Court.

2. The Governor in Council thinks it very doubtful whether the power of a Collector to refuse to register without being liable to give valid reasons for his refusal would be upheld, and is not of opinion that the public interests are likely to be injuriously affected by the construction now put by the High Court on Section VIII of Regulation XXV of 1802.

3. The proper course, therefore, to pursue at present is for the Collector to adduce reasons for his refusal to register when the Suit comes on for hearing before the Civil Judge. The

arguments set forth in the Board's Proceedings of 23rd July 1861, No. 3,934, or a portion of them, together with such other arguments as the Government Pleader may suggest should be used on the occasion; and when the result of the Suit is made known to them, the Govern·· will consider what further steps it is advisable to take.

4. The Governor in Council will only further remark that he is unable to concur w view expressed by the Board in paragraph 13 of their Proceedings, that a Zemin·· is a middleman put in by Government for revenue purposes and possesses a mere contract int· in the collection of the land assessment. Without discussing this question at length, it is to b· remarked that a Zemindar is an actual proprietor as regards at least the unoccupied lands of his Estate.

(Signed) C. G. MASTER,
Deputy Secretary to Government.

5

Bds Proc: 4 Sept 13. N. 4865

Reg XXV of 1802 - Sect VIII declares that Zemindars "shall be at free liberty to transfer, without the previous consent of the Govt or of any other authority to whomever they may think proper" their proprietary right in the whole or any part of their Zemindaries - and that such transfers "shall be valid & shall be respected by the Courts of judicature & by the officers of Govt" provided they are not repugnant to Mahomedan or Hindu Laws or to the Regulations of Govt. It then enacts as to further provisos, that unless such transfers are" regularly

registered at the Office of the Collr" and (where the transfer is of a part only of the Estate) unless the public assessment has been previously fixed on the transferred portion. the transfers "shall be of no legal force or effect" and shall not exempt the remainder from the payment of any part of the land tax or the entire Zemindary previously to such transfer and the whole Zemindary shall continue answerable for the total land tax just as if no such transaction had occurred.

The Sudr Court in 1832 declared by C.O. that the Civil Courts could not interfere with the Registry of lands & that Collrs "alone have authority to perform the registry in the manner and under the circumstances set forth in the Regulation" - Judicial decisions of the same effect have also been passed by the Sudr Ct.

The High Court have now reversed these rulings and have declared that a Collr is bound to register all transfers, if he is of opinion that they are not objected to Mahomedan or Hindu law or the Legislative Act. these being the only invalidating reasons against such transfers.

The Govt Members of the Bd of Rev. strongly recommend that an appeal be at once preferred against this recent ruling, for the reasons

stated in the papers before Pt.

The old ruling has doubtless a convenient one for the Pts but I do not see how Pt can uphold it.

In the first place the words of Sect VIII clearly intended to give Zemindars free liberty to deal with their estates in any way not repugnant to their Muhammedan or the British Regulations. The Pt would have to argue that having first declared that Zemindars might without their consent transfer their estates to any one, that consent and still indispensible and might be withheld without reason assigned & without appeal to any Court or authority. I do not think Pt could argue - or the Priy Council sustain such a plea.

In the next place the reservation of such a power seems unnecessary for the security of the interests of the State - limited as these are under the Permanent Settlement to the Peshcush annually payable - For this the Estate, by whomsoever held, continues answerable. & the object of the legislature is merely to enable Pt & Govt to see with certainty who is the proprietor & the extent of his liability.

The conditions of Grant all remain unchanged by the transfer which in fact merely substitutes A for B.

Again the Registry here referred to is evidently that provided for in Reg XXVI of 1802. Sect II of which merely states that Collrs shall enter all transfers in their registers - without prescribing any restrictions at all -

Lastly the ruling of the High Court - if I read it correctly - puts the Collr able the power he can reasonably demand = he enquires into the validity of the transfer and if not satisfied of that, he can refuse to register - when - if the parties concerned do not acquiesce in his decision, the Question comes before the constituted Courts for decision - In the case which has given rise to this reference the Collr can Dabbeehend, urge among other objections, the legal inability of the Zemindar of Ramnad to make a gift of any part of the Estate ~~which~~ ~~gifts being~~ and the Question would then come before the Courts for decision - I do not see how he can maintain that the Collr may refuse to register & that such refusal shall not be open to Question by any authority - Estates are

constantly sold for arrears of the highest bidder - but Govt does not claim to render the sale null by refusing to register - 3

My own opinion is adverse to the proposed appeal - but the safest course would be to put it to the Govt Pleader to state whether under the ruling of the High Court a Collr could not refuse to register on the ground that the transfer was an infringement of the rights of Govt / as for instance where a childless widow having but a life interest sought to defeat the right of the State by escheat, by transferring the estate - / whether

- I do not see that an Appeal to the Privy Council can be made at present. - When the suit comes on for hearing de novo before the Civil Judge, the course seems to be for the Collector to address arguments in support or in justification of his refusal to register (See them detailed in Bd Pro of 23 July/61 No 3934) and after the suit is decided then Govt will see its way about appealing. - The Govt Pleader should be consulted about the defence to be now made by the Collector

Elt

I agree with above. I should doubt too whether a Collector can refuse to register - his exception grounds assigned, the ordinary Civil Court alone which is to decide upon - The Collectors of provinces always have sufficient protection by the power the Collector assumes to transferred portion of an estate at its proper proportion to Peishcush

JP

- Nor I - A Zemindar even when created by the Govt is not merely a middleman or contractor as stated in P13 of Bd Pro - He is the actual proprietor of all the unoccupied land at the annual Settlement is an actual Estate existing, Sheltered before the Courts Tribunal / came under new rule, and the Zemindar is not to be looked on as a mere Revenue Contractor

Elt

JP

in such a case / the claim of Govt would not be fully investigated / decided by the Court subject to the usual appeals - and merely state here the interests of Govt are affected by the new ruling -

I do not see the bearing of the argument in the Bd Pro: or what object would be gained by refusing to recognise transfers as valid against Govt which are valid between the transferrer & transferree - The object of registry, I should rather need just to prevent the / i.e. to prevent the Zemindar secretly diverting himself of his liabilities. The rights of the Govt

do not seem func-
to be affected ab-
ab. and they are
protected by Reg IV of
1822.

S. D.S.

Bellary.
14/8/63.

Revenue Department.

Proceedings of the Madras Government.

Read the following letter from Proceedings of the Board of Revenue

(Here Enter 4th August 1863. No. 4865)

Order thereon 26th August 1863. No. 1569.

The Governor in Council has given careful attention to these papers, but is unable to concur in the opinion of the Revenue Board and Government Pleader, that an appeal should be at once made from the decision of the High Court.

2. The Governor in Council thinks it very doubtful whether the power of a Collector to restore [illegible] with

Ellis
8P.

C19 Aug 63 No 15

Public interests are co
to be injuriously affected
by the Construction pro
put by the High Court
on Section VIII of Regula
XXV of 1802.

3. The proper course,
therefore, to pursue at
present is for the Collecto
to address reasons for h
refusal to register when
the suit comes on for hear
before the Civil Judge.
The arguments set forth
in the Board's Proceedi
of 23d July 1861, No 3934
or a portion of them,
together with such other
arguments as the Govern
-ment Pleader may sugge
should be used on the
occasion; And when the
it is made

17

Only further remark
he is unable to concur
in the view Expressed by
the Board in paragraph
13 of their Proceedings, that
a Zemindar is merely a
Government pensioner put in by Govt
for some purposes and
as a mere Contract
interest in the Collection
of the Land Assessment.
Without discussing the
question at length, it
to be remarked that
Zemindar is an Ab
proprietor to
land

To
The Board of Revenue.
Govt Pleader's Dept.

24 July/61 No. 339-340

27 July/61 No. 399-400

11 October 61 No. 162-163

19 November/61 No. 183-184

Endorsement on Petition
No. 1941/61 of 8-10-61
C. No. 2232/61 Lodged.

Reports to England
of 27-3-1865 No. 21 Mis.

June 1863 Dcsptch.
of Govt for extracts

C. No. 1569.

Rec: of the Madras Govt
D/ 26th August/63.

From Govt Pleader 11 Sept/63
C. No. 2174.

6410/92

Judgment of the
Privy Council on the Regular
Appeal Suit No. 58 of
1861, received thro'
Pleader, with orders thereon