

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	~~Press~~ Mis.
Dated	<i>October</i> 1863.

Not to be folded or roughly handled

Copy Opinion

The issue of the "new form Certificates" having been discontinued, the question submitted to me is narrowed to 1st the refusal of "old form" Certificates; 2nd Certificates in cases of land held under the original demises for 99 years; and 3rd as to the form where land is held "without Certificate": by which last I presume is meant, land newly taken up for which some instrument of title is required.

2. I am altogether opposed to the issue of "Certificates". They are no security to the Government; and but little if any to the holder. While the late Supreme Court has constantly rejected them as any evidence of title, I remember but one instance in which a Certificate has been of any actual service to the holder: and then only incidentally. In that case the Plaintiff declared that a certain house had been given to his wife as her Stridana on the occasion of her marriage, and he and his witnesses swore that the title deeds were handed over to her at the ceremony. It was however discovered that the title deeds were at the time alleged in the Collectors Office for the purpose of obtaining a Certificate; and that a gross fraud was defeated.

3. But as a general proposition it may be stated that these Certificates are worthless. So far as the Government is concerned, Mr. Dale has already pointed out that they cannot confer upon it any rights it had not before: and so far as the tenant is concerned, he will shortly have the opportunity of registering, which in my opinion is the proper, the safe, and the legitimate mode of evidencing title.

4. With regard therefore to cases in which applications may

thus

may be made by the holders of "old form" Certificates for renewals, or by holders of the original demises for 99 years for Certificates. I think the Government would act most prudently in declining to comply with their requests, pointing out, if it be deemed necessary, the opportunity, which will shortly exist of registering title deeds.

5. With respect to the grant of instruments of title in the case of lands newly taken up, and for which no document of title has yet been given. I am of opinion that the old form of grant for 99 years should be resorted to.

6. I am altogether opposed to the creation of "freehold" interests in India. One result will be, at any rate so far as British Subjects are concerned, the introduction of real property law into India; and that in the one satisfactory condition in which it prevailed in England some twenty five years ago, before the improvements and ameliorations introduced by recent legislation, which do not apply or extend to this Country. I deprecate two courses of devolution of property in this Country, real property going to the heir, personal to the personal representative. Real property belonging to Br. Subjects, it is true, by Fergusson's Act is liable as assets for the payment of debts, but if land be not granted in fee simple but on long leasehold tenure (999 years if needful) it will pass to the personal representative in common with all personal property, while the one great desideratum - certainty of tenure - is as effectually provided for as if the "fee simple" itself were granted.

Should the Government think these views sound, I would recommend all freshly taken up land in Madras being granted in accordance with the old demise for 99 years. The Grant will require a few formal alterations, which, if the Govt. Solicitor

will submit to me in Draft, I shall be happy to settle. There is however one clause in the Grant (Form No. 1 submitted to me) which I think it would be better altogether to omit. I allude to the payment of a fine (30 pagas) at the end of every thirty years. This fine, I am informed, is in practice never paid or demanded; and therefore its introduction only serves to obscure the title. For supposing a purchaser from the original holder or his assignees after some forty or fifty years were inquiring into his vendor's title he might be told that unless this fine had been paid the lease was forfeited.

Oct. 3rd }
1863. }

Signed John Bruce Norton
Adv. Genl.

True Copy
A. L. Boyson
Govt. Secy.

Proceedings of the Board of Revenue
dated 13th October 1863.

Read the following.

N. 743

From John Robert Peyton
Government Solicitor Madras.
To W. Huddleston Esq.
Secretary to the Board of Revenue
Madras.

Sir,

I have the honor to state for the information
of your Board that I submitted their Proceedings of the
11th of August last N. 5007 on the subject of a new Form
of Certificate, with such other papers and informa-
tion as seemed to me necessary, for the consideration
of the Advocate General, with whom I have since con-
ferred.

I now forward a copy of his opinion.

I shall delay further action in the matter
until I have heard again from you.

Madras,
October 5th 1863

I have &c.
Signed J. R. Peyton
Govt. Solicitor

Ordered to be submitted to Government
with reference to their order dated 6th August 1863 N. 1261
N. 3. and with the Board's recommendation that the
course advocated by Mr. Norton be adopted, and that
the Government Solicitor be instructed to confer
with him as to the modifications of the old form
of Dease for 99 years which he consider it
best to maintain. The omission of the provision
for payment of a fine on renewal has the Board
full approval.

The adoption of this course in combination
with

N. 2483/63

A New Form of Certificate

(Copy)
Advocate General's opinion

N. 1863/7
October 9 1863

1 Encl.

In N. 1863/8 from Govt. Secy to Secy
to the Board of Revenue dated 8th Oct 1863

with the enactment of the Draft Act which the
Collector has been requested to prepare for the sum-
mary sale of land on which the Government have
not relinquished the right to re-enter on default
will meet most of the difficulties now experienced
in maintaining the rights of Government as the re-
presentative of the public.

3 The discontinuance of the old Certificates of
tenure, formerly granted in cases of transfer of right,
does not appear to the Board objectionable.

4 It may safely be assumed that the transfe-
res will be careful to record their rights and even
pending the enactment of the Bill now before
the Imperial Council, it will be competent to the
Collector to register such transfers as hitherto on
sufficient evidence, altho he will no longer issue
any certificate of tenure.

5 The facilities afforded by the present system
for the realisation of the public dues will in no
way that the Board can see be lessened by the
adoption of this course.

6 An Extract from the Register might be fur-
nished under the usual rules, when such was
desired by the parties to the transfer.

7 The Board see no real objection in equity to
the issue of Leases in the old form where parties
desire to obtain such evidence of Title in addition
to what they already possess.

(True Copy & Extract)

L. M. M. M.
Secretary.

To J. C. Sin Egn

Secretary to Government

Revenue Department

with enclosure

6th August 1863 No 53256
No 2102/63.

Wm = 1863 0146
Proceedings of the House
of Commons.

Patents
Sept 14
Nov 15
Oct 1863.
Ct. Cl.

Submitting with some
letter from the Government
relative to the subject of a
new form of certificate.

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The Editor