M.R.O. 16—12,000—27-6-34

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1397 Press Mis.

467. 469

Dated 22-6-1865.

***Not to be folded or roughly handled***

## *Proceedings of the Madras Government, Revenue Department, 22nd June 1865.*

Read again Proceedings of Government, dated 5th June and 12th August 1863, Nos. 970 and 1,486.

Read also the following :—

No. 467. Proceedings of the Board of Revenue, dated 11th December 1863.

Read the following letter from CLEMENT DALE, Esq., Government Pleader, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 2nd November 1863, No. 131.

SIR,

1. I have the honor to acknowledge the receipt of the Proceedings of the Board of Revenue, under the date and number noted in the margin, and to report, as my opinion, that in cases in which lands, on which Government have claims, are attached by a Moonsiff's Court in execution of a Decree, and it is desired to move such Court for asserting the claim of Government, a Vakeel of the Court should be appointed by a Vakalutnamah duly executed.

Standing Circular No. CXXVI.
Proceedings of the Board of Revenue, 18th September 1863, 5,919.

2. The 3rd Clause of Section 37 of Regulation XIV. of 1816 does not extend to the Courts of Moonsiffs; it applies only to the Sudder Adawlut, Zillah, and Subordinate Zillah Courts.

3. I am of opinion that the Vakalutnamah must be signed by a Secretary to Government, under an Order from the Governor in Council.

4. I am of opinion that the Vakalutnamah need not be on Stamp. The 39th Section of Regulation VI. of 1816 has not been (so far as I am aware) repealed, and in the 30th Section of Act X. of 1862, provision is made that nothing in that Act should be held to repeal any special provision in any Regulation for the use of plain or unstamped paper in any Judicial proceeding, unless such provision should be expressly repealed by that Act. It is true that by Act No. XVII. of 1848, so much of Regulation XIII. of 1816 (the old Stamp Regulation) as related to the levying of Stamp duties instead of fees on the institution of Civil actions, was made applicable to the Courts of District Moonsiffs, but (if that rendered a Stamp on a Vakalutnamah filed in a Moonsiff's Court necessary) the Regulation XIII. of 1816 has been repealed by Act No. XXXVI. of 1860.

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1. Ordered to be submitted for the consideration of Government, with reference to their Proceedings, dated 5th June and 12th August 1863, Nos. 970 and 1,486, respectively.

2. The course considered necessary by the Government Pleader in regard to the execution of Vakalutnamahs in these petty cases, in which the Vakeel's fee is only Annas 4, will be excessively inconvenient, irrespective of other objections.

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No. 468. Proceedings of the Board of Revenue, dated 18th May 1865, No. 2,583.

Read the following letter from E. G. R. FANE, Esq., Collector of Madras, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Sydapet, 10th April 1865, No. 96.

SIR,

1. In preferring any objection or claim to landed property attached under the orders of District Moonsiffs under Section 249 of the Civil Procedure Code, my predecessors and myself have done so through the Government Pleader, who moved the Civil Judge to send an order to the Moonsiff on the subject, and the replies of the District Moonsiffs were communicated to the Collector by the Civil Judge through the Government Pleader. The present Civil Judge, Mr. Thompson, has, however, now refused to follow the above practice, and has advised that all objections and claims on behalf of Government to the proceedings of the Moonsiffs

(Act 8. of 1859)

should be made to the Court direct, as ruled by the Sudder Court in their Proceedings, dated 16th April 1860.

2. Mr. Thompson appears to be right, but as the change in the practice entails upon Government the necessity of employing a Vakeel each time any representation has to be made to the Courts, I beg the Board will be pleased to let me know whether I may incur charges for employing a Vakeel, and credit it to the head "Law and Justice." I should also like to know whether it will be necessary to execute a Vakalutnamah to the Vakeel so employed on each occasion. The claims referred to are chiefly regarding arrears of revenue due on lands attached by the Court in satisfaction of Decrees.

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The foregoing letter will be submitted for the consideration of Government, as it is observed that the orders of Government were requested on the same subject in the Board's Proceedings, dated 11th December 1863, No. 7,828.

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No. 469. ORDER THEREON, 22nd June 1865, No. 1,397.

**Miscellaneous.**

1. The question raised in the above papers is how claims on account of Government arrears due on lands attached by a District Moonsiff's Court in execution of a Decree are to be preferred.

2. It seems to be clear that, in modification of the former practice, the application must in future be made direct to the Court which has attached the land, in accordance with Section 247 of the Code of Civil Procedure.

3. From the Government Pleader's letter, dated 2nd November 1863, to the Board of Revenue, it appears that, in his opinion, such application must be made by a Vakeel of the Court appointed by a Vakalutnamah, signed by a Secretary to Government, under an Order from the Governor in Council, but that no stamp is required under the provisions of Section 39, Regulation VI. of 1816.

4. The Government, however, observe that this Section of the Law was repealed by Act X. of 1861, and that Article 8, Schedule B, Act X, of 1862, expressly provides a Stamp duty of Annas 8 for Vakalutnamahs for the conduct of any case in any Court, Civil or Criminal, other than the Sudder Court.

5. Next as to the manner of executing the Vakalutnamah for applications to Moonsiffs, the Government observe that among the "recognized Agents" by whom or by whose duly constituted Attorney applications to, or appearances in any Civil Court may be made, as described in Section 17 of the Code, "Persons being ex-officio or otherwise authorized to act for Government in respect of any suit or judicial proceeding" are specified in Clause 3.

6. All therefore that seems necessary to enable the Collector or his duly constituted Attorney to make the necessary application to the Moonsiffs' Courts in the matter of Government claims against lands attached by such Courts in execution of Decrees, is for Government to issue a general order constituting all Collectors of Districts their recognized Agents for this special purpose. If, as is probable, it would be more convenient to empower the Tahsildars of Talooks to act in this behalf, there appears to be no obstacle to the arrangement from the provisions of the law.

7. Section 249 of the Code provides that in every case of a sale of land in execution of a Decree, a written Notification of such intended sale shall be posted for at least thirty days in the Office of the Collector of the District in which the land is situated, and that such Notification shall specify the time and place of intended sale, the particulars of the property, the revenue demand assessed on the land, the amount of the judgment debt, "*together with any other particulars that the Court may think necessary.*" There would seem to be no objection to including in these "other particulars" the amount of the arrears due to Government for the land.



8. The object of the application to the Court is to facilitate the recovery of the Government dues out of the sale proceeds of the land as a claim taking priority in law of all other claims against the land, but the Government have no doubt that if not so recovered, the land remains still liable for the arrear, as an incident attaching to all assessed land in the country, and that the purchase is made subject to such liability.

9. The opinion of the Government Pleader will be requested on the propriety of the course above suggested for the conduct of applications in such cases to the Moonsiffs' Courts. An early reply is desired.

(True Extract.)

(Signed) W. HUDLESTON,
*Acting Secretary to Government.*

To the Government Pleader.
" the Board of Revenue.

Exd. S. T. Augustin.

(Act 8. of 1859)

Act 1397 — 22 June
Mary Ann Hall
of St. James' Parish
Widow
and
Thomas Hall
of the same Parish
Farmer
of the other part
Whereas the said Thomas Hall
is seized in fee simple
subject to a mortgage
dated the 7th day of December
1838 and made between
the said Thomas Hall
of the one part
and the said Mary Ann Hall
of the other part
to secure the payment
of the sum of £2583
and interest thereon
at the rate of £5 per cent
per annum
And whereas the said
Thomas Hall has agreed
to sell and the said
Mary Ann Hall has agreed
to purchase
the fee simple
of the said hereditaments
and premises
comprised in the said
mortgage
free from all incumbrances
except the said mortgage
Now this Indenture witnesseth
that in pursuance
of the said agreement
and in consideration
of the sum of £2583
to the said Thomas Hall
paid by the said
Mary Ann Hall
at the request
of the said Thomas Hall
(the receipt whereof
is hereby acknowledged)
the said Thomas Hall
doth hereby grant
unto the said
Mary Ann Hall
all that
messuage or tenement
and farm
situate
in the parish
of St. James'
aforesaid
called
Hall's Farm
containing
by estimation
one hundred
and twenty
acres
more or less
and all
houses
buildings
barns
stables
outhouses
yards
gardens
orchards
ways
waters
watercourses
rights
liberties
privileges
easements
profits
commodities
and appurtenances
whatsoever
to the said
messuage or tenement
and farm
belonging
or appertaining
or therewith
or with any part
thereof
now or
at any time
heretofore
used
occupied
or enjoyed
and all
the estate
right
title
interest
property
claim
and demand
whatsoever
of the said
Thomas Hall
in
to
or out of
the said
messuage or tenement
and farm
and premises
To hold
the said
messuage or tenement
and farm
and premises
unto the said
Mary Ann Hall
her heirs
and assigns
for ever
Provided always
that if the said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
at any time
hereafter
pay unto the said
Mary Ann Hall
her heirs
executors
administrators
or assigns
the said sum
of £2583
with interest
thereon
at the rate
of £5 per cent
per annum
then
and from
thenceforth
this present
Indenture
and the estate
hereby granted
shall cease
and determine
and be void
to all intents
and purposes
whatsoever
And the said
Thomas Hall
doth hereby
covenant
with the said
Mary Ann Hall
that he
the said
Thomas Hall
will
during the
continuance
of this security
keep the said
messuage or tenement
and farm
and premises
in good
and tenantable
repair
and condition
and will
not
without
the consent
in writing
of the said
Mary Ann Hall
her heirs
or assigns
first had
and obtained
cut down
or destroy
any timber
trees
or woods
growing
upon the said
premises
except
for the
purpose
of repairing
the said
messuage or tenement
and farm
and premises
And the said
Thomas Hall
doth hereby
further
covenant
with the said
Mary Ann Hall
that he
the said
Thomas Hall
will
during the
continuance
of this security
insure
and keep insured
against loss
or damage
by fire
the said
messuage or tenement
and farm
and premises
in the sum
of £2583
at least
in the
Phoenix
Fire Office
in the
City
of London
And that
in case
the said
messuage or tenement
and farm
and premises
shall
be destroyed
or damaged
by fire
during the
continuance
of this security
the said
Thomas Hall
his heirs
executors
administrators
or assigns
will
forthwith
lay out
the money
to be received
by virtue
of such
insurance
in rebuilding
or repairing
the said
messuage or tenement
and farm
and premises
And it is
hereby
agreed
that the
said
Mary Ann Hall
her heirs
executors
administrators
or assigns
may enter
upon the said
messuage or tenement
and farm
and premises
and rebuild
repair
and insure
the same
in case
the said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
neglect
or refuse
so to do
And it is
hereby
agreed
that the
said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
and will
from time
to time
pay
and discharge
all
rates
taxes
assessments
and outgoings
whatsoever
now
or hereafter
to be
charged
upon the said
messuage or tenement
and farm
and premises
And it is
hereby
agreed
that the
said
Mary Ann Hall
her heirs
executors
administrators
or assigns
may enter
upon the said
messuage or tenement
and farm
and premises
and pay
and discharge
the said
rates
taxes
assessments
and outgoings
in case
the said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
neglect
or refuse
so to do
And it is
hereby
agreed
that the
said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
and will
from time
to time
pay
and discharge
all
rents
and
covenants
and
conditions
now
or hereafter
to be
reserved
and contained
in the
lease
under which
the said
messuage or tenement
and farm
and premises
are
now
held
and
will
keep
and perform
the
covenants
and
conditions
therein
contained
on the
part
of the
lessee
to be
kept
and performed
And it is
hereby
agreed
that the
said
Mary Ann Hall
her heirs
executors
administrators
or assigns
may enter
upon the said
messuage or tenement
and farm
and premises
and pay
and discharge
the said
rents
and
covenants
and
conditions
in case
the said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
neglect
or refuse
so to do
And it is
hereby
agreed
that the
said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
and will
from time
to time
pay
and discharge
all
costs
charges
and expenses
which
the said
Mary Ann Hall
her heirs
executors
administrators
or assigns
may
incur
or sustain
by reason
of the
non-payment
of the
said
rates
taxes
assessments
outgoings
rents
covenants
and
conditions
or by reason
of the
non-performance
of the
said
covenants
and
conditions
and
all
such
costs
charges
and expenses
shall
be
added
to the
principal
sum
of £2583
and
shall
be
secured
by this
present
Indenture
and
shall
bear
interest
at the
rate
of £5 per cent
per annum
And it is
hereby
agreed
that the
said
Thomas Hall
his heirs
executors
administrators
or assigns
shall
and will
from time
to time
pay
and discharge
all
costs
charges
and expenses
which
the said
Mary Ann Hall
her heirs
executors
administrators
or assigns
may
incur
or sustain
by reason
of the
non-payment
of the
said
rates
taxes
assessments
outgoings
rents
covenants
and
conditions
or by reason
of the
non-performance
of the
said
covenants
and
conditions
and
all
such
costs
charges
and expenses
shall
be
added
to the
principal
sum
of £2583
and
shall
be
secured
by this
present
Indenture
and
shall
bear
interest
at the
rate
of £5 per cent
per annum

See Section 61 of the Act 8 of 1839

augmented Agent for the
Special purpose. Specify
in particular the Deeds
Wills Conveyances & Engrossments
of Title of Lands & Tenements in
the Schedule, the Offices
& Registries & the Arrangements
from the Jurisdiction of the Court.

Order 249. of the Code provides
that any person claiming
in Relation to any Lands a writing
by Petition of Right intended shall
distribute forthwith Court Bundles
in the Office of the Clerk of the District
in which the Land is situated - Petition
under Petition shall specify the
time & place of intended sale the
particulars of the purpose the Income
Dividends accruing on the Land
the amount of the Judgment debt
together with any Particulars
that the Court may think necessary
Where the Petition has been presented
by the Judgment Creditor particulars
of the amount of the arrears due for
the Land
The object of the application to the Court is to
facilitate the recovery of the Judgment
out of the sale proceeds of the Land
and claim taking priority in Law
of all other Claims upon the Land.
But the Court has no Power that
if the Judgment Creditor the Land
remains unsold for the arrears
and the Judgment debt attaching to
assessed Land in the County

Order 14 Rule 1 (5) (14)

that the purchaser is under duty of enquiry
to satisfy himself that the Court has
the jurisdiction to make the Order
and that all necessary Parties are
before the Court.

5. The Sale of Land is usually
effected by an Auction.

13. Order

Revenue 1865 Sept.
Pro: of Govt for June
No 1327
Pro: of the Madras Govt
Dated June 1865

Pro No. 82-83
5-6-63
" 107-108
12-8-63

Pro Board of Revenue
dy 11 Sept. 65 C No. 2572
From Govt Madras dy
11 Octr. 65 C No. 2874.

The Court proposed
to be followed for the re-
covery of Government
claims on lands attached
by a District Moonsiffs
Court in execution of a
Decree, referred to the Govts
Pleader.

No 467 @ 469