M.R.O. 1—89,000—16-10-23.

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue DEPARTMENT.

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| G.O. No. 1565 | Press Mis. |
| 88-89 | |
| Dated 25 June 1869 | |

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

No. 38. Read the following :—

Extract from the Proceedings of the Government of India in the Foreign Department, Revenue, dated Simla, 18th May 1869, No. 121.

READ an extract from the Home Department, No. 250, dated 10th May 1869, [illegible] patch from Her Majesty's Secretary of State, No. 4, dated 11th February 1869, relative to the invalidity of certain Inam Title-deeds executed and issued by the Inam Commissioner of Madras on behalf of the Governor in Council in that Presidency.

ORDER.—Ordered that a copy of the above Despatch and of its accompaniment be forwarded to the Government of Fort Saint George for information, the special attention of that Government being invited to paragraph 2 thereof.

(True Extract.)

(Signed) C. GIRDLESTONE,
*Offg. Under-Secy. to the Govt. of India.*

No. 39. ORDER THEREON, 2nd June 1869, No. 1,545.

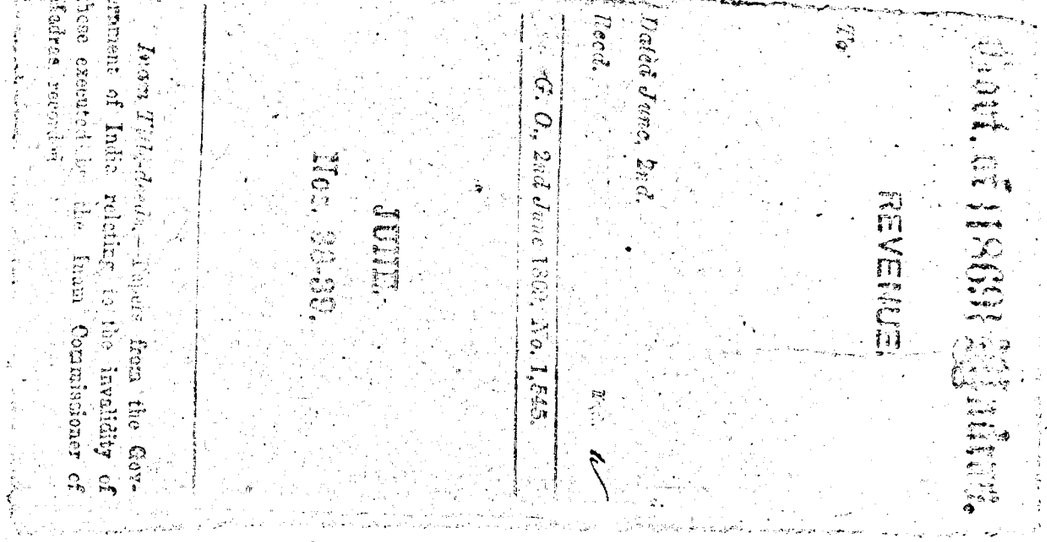
Land Revenue.

RECORDED, with reference to G.O., under date 28th April 1869, No. 1,148.

(True Extract.)

(Signed) H. WELLESLEY,
*Acting Under-Secretary to Government.*

Exd. F. R. Bantleman.




(Copies)

No. 250.

*Extract from the Proceedings of the Government of India in the Home Department, (Revenue), under date Simla, the 10 May* 1869.

READ again the undermentioned papers relative to the invalidity of certain Inam Title Deeds executed and issued by the Inam Commissioner of Madras on behalf of the Governor in Council at that Presidency :—

Letter from the Government of Madras, No. 2532, dated 2nd October 1868, and enclosures.

Ditto to the Government of Madras, No. 434, dated 30th ditto.

Despatch to the Secretary of State, No. 18, dated 5th November 1868.

Read a Despatch from the Secretary of State, No. 4, dated 11th February 1869, and enclosure.

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ORDERED, that a copy of the above papers be forwarded to the Foreign for information and such further orders as may be necessary.

(True Extract.)

W. S. Seton-Karr.

*Under Secy. to the Govt. of India.*

*Invalidity of certain Inam Title Deeds executed and issued by the Inam Commissioner of Madras on behalf of the Governor in Council.*

No. 2532, dated the 2nd October 1868.

From—R. A. DALYELL, ESQ., Acting Secy. to the Govt. of Fort Saint George,
To—The Secretary to the Government of India, Home Dept., Simla.

WITH advertence to the telegram from this Government, dated 1st July 1868, requesting that all action on the Madras Inam Titles Bill might be suspended, I am directed by the Right Hon'ble the Governor in Council to forward the accompanying letter* from the Advocate General at Madras, and the Proceedings of Government thereon, dated 10th September 1868, No. 2354.

* Dated 3rd July 1868.

2. The circumstances under which the preparation of the Bill had become necessary were fully detailed in the enclosures to the letter from this Government, in the Legislative Department, under date 27th May 1868, No. 173, and it will now be observed that the Advocate General, when in consultation with the Government Solicitor as to the proper form of Title Deed to be adopted in future, has discovered that the existing Deeds are even more defective than was anticipated when the Bill for their amendment was framed.

3. The Advocate General points out (1) that these documents purport to be executed by the Inam Commissioner on behalf of the Governor in Council, whereas, under the provisions of the Statutes noted in the margin, they should have been executed on behalf of the Secretary of State for India, either by the Governor in Council himself, or by his order; and (2) that the Inam Commissioner, who did execute the Deeds, does not appear to have been formally authorized so to do on behalf of the Governor in Council. Mr. Norton adds that, in his opinion, the Courts of Law having in view these unfortunate defects in the Title Deeds will necessarily hold that the Deeds hitherto issued are altogether invalid.

21 and 22 Vic., Cap. 106, Section 40, as amended by 22 and 23 Vic., Cap. 41.

4. There are but two means which occur to Mr. Norton by which these errors may be remedied: either an application must be made to Parliament for a special Act, declaring that the Deeds hitherto issued shall have the same effect as if they had run in the name of the Secretary of State for India, or all the defective Deeds must be re-called, and new ones must be issued in a proper and legal form. He expresses himself in favor of the latter course, for he is of opinion that, unless it could be shown that to re-call the old Title Deeds would be attended with dangerous or serious consequences, an application to the Home Government for an Act of Parliament of the nature indicated would be refused, inasmuch as the existing Acts of Parliament are perfectly clear and explicit, and should have been conformed to in the first instance.

5. Under these circumstances, and in consideration of the very strong and decided opinion which is expressed by the Advocate General as to the course which the Government should adopt in order to remedy the additional defect which has been discovered in the Deeds, the Right Hon'ble the Governor in Council has resolved to re-issue these documents in a new and legal form; and I am, therefore, directed to report these proceedings to the Government of India, with the request that no further steps may be taken in regard to the Inam Titles Bill, as the course now ordered will render unnecessary any enactment of the kind.

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Dated the 3rd July 1868.

From—The Advocate General, Madras,
To—The Chief Secretary to the Govt. of Fort St. George.

ON considering, with the Government Solicitor, the subject of the new form of Title Deeds proposed to be issued to Inamdars, it appears that there exists in all the Title Deeds already issued a far more fatal defect than that which it was the object of the lately passed Inam Act to rectify.

2. These Title Deeds purport to be executed by the Inam Commissioner on behalf of the Governor in Council. No mention whatever is made of the Secretary of State.

3. Now by 21 and 22 Vic., Cap. 106, Section 40, as amended by 22 and 23 Vic., Cap. 41, all real and personal property of the East India Company is vested in the Queen, and is disposable of either by the Secretary of State in Council, or by the Governor General, or any Governor in Council in India.

4. But when the latter course is pursued, the contract or conveyance must be in the name of the Secretary of State, and executed either by the Governor in Council, or by his order.

5. In point of fact the Governor in Council, who purports to release to the Inamdar the Government rights in the land revenue, has nothing to convey, and the Title Deeds are mere waste paper.

6. There is only one possible view under which the Title Deeds hitherto issued could be right in form.

7. Section 2 of 22 and 23 Vic., Cap. 41, provides that the conveyances, contract, &c., executed by the Governor General, or any Governor, as the case may be, *may* be in the name of the Secretary of State. If then this expression could be regarded as merely permissive, it might be held that such instruments might be executed in either of two ways; that is to say by the Governor General, or Governor, in his own name, under the previous Section (1) on the one hand, or in the name of the Secretary of State under Section 2, on the other.

8. But I am of opinion that there is no room for any such contention. I think this is one of those cases in which the word "*may*" is not to be construed as merely permissive, but that it is peremptory, and has the full forces of "*shall.*"

9. The Act was passed in consequence of doubts as to the powers of the Governor General, or Governor, to execute any conveyance, contract, &c., after the passing of 21 and 22 Vic., Cap. 106, whereby the whole property in India of the East India Company was vested in the Queen (Section 39), and the Secretary of State named (Section 40) as the *only* authority to execute conveyance, contracts, &c.

10. Section 1 of the Remedial Act 22 and 23 Vic., Cap. 41, vests in the Governor General and Governors the power to execute conveyances, contracts, &c. Section 2 then proceeds to point out how such instruments are to be executed, and here only one form is specified—that in which the Secretary of State is to be named as a party, and the instrument to be, and to be expressed to be, executed on his behalf by the Governor General, or Governor, or his order.

11. It appears, too, that the Title Deeds are also informal, inasmuch as they have been executed by the Inam Commissioner without any order by the Governor in Council authorizing such execution.

12. The lately passed Inam Act does not purport to remedy this defect. It only deals with the substitution of the term Inam for land, nor do I think the Indian Legislature would be competent* to deal with an Act of the Imperial Legislature.

* See Indian Councils Act, Section 22, which expressly refers to Acts 21 and 22 Vic., Cap 106, and 22 and 23 Vic., Cap. 41.

13. If the question as to the validity of title were simply between the Government and the Inamdar, possibly no great mischief might arise from leaving matters, as far as concerns the Title Deeds hitherto issued, *in statu quo*. For the Government would never seek to take advantage of this slip as against the Inamdar; but, unfortunately, the case is not likely to be confined to questions arising between the Government and the Inamdars. Third parties have purchased and otherwise dealt with this property since the titles were issued; and questions may at any moment arise between the Inamdars and their representatives by assignment, or otherwise, on the one hand, and third parties on the other, questioning their title in our Courts of Law. I am of opinion that a Court would hold necessarily that the Title Deeds hitherto issued convey no title whatever to the Inamdar, because the donor, that is the Local Government, had nothing to convey, the estate in the Inam being vested in the Queen, and two Acts of Parliament having expressly pointed out how and by whom any interest in such estate is to be parted with to third parties.

14. Under these circumstances, I am in doubt as to the form in which the new titles ought to be drawn; and as this will depend upon the course which His Excellency the Governor in Council shall adopt, I have the honor to request further instructions before the Government Solicitor proceeds with the drafts of the Deeds.

15. I am bound to draw up legal instruments, and to bring all these difficulties under the notice of Government: and the question now is, what is the best course to pursue?

16. It appears to me that it is impossible to leave the Title Deeds, hitherto issued, in their present condition. How is the blot, now it is hit, best to be amended?

17. One course would be to apply to Parliament for an Act, declaring that the Title Deeds, hitherto issued, shall be read, or have the same effect, as if they had been expressed to be made on behalf of the Secretary of State.

18. But this is a clumsy procedure, and I think it very problematical whether Parliament would grant such relief. The natural answer might be—You have made the blunder, rectify it yourselves. The Acts of Parliament are perfectly clear and explicit; you ought to have followed them in the first instance. Re-call your faulty titles, and issue new in conformity with the provisions of the Acts.

19. Unless it could be shown that to re-call the Title Deeds hitherto issued would be attended with dangerous or very serious consequences, it seems to me difficult to escape the force of such a reply.

20. It has been stated that the re-call of Title Deeds already issued would create great alarm and suspicion among the 400,000 Inamdars who have had Title Deeds given them.



On this point I am, of course, not competent to form or offer an opinion. It is a question on which the Revenue Board can be consulted.

21. But it appears to me that, if such a measure can possibly be adopted, it is the best and shortest way of meeting all difficulties; and I think, as a general rule, the straightforward and open way of rectifying admitted errors is, in the long run, found to be the shortest and easiest.

22. Should His Excellency the Governor in Council determine on this course, a notification would be necessary, explaining that, by an oversight, the Title Deeds had been issued in the name of the Governor in Council instead of the Secretary of State, and that fresh Title Deeds in the name of the latter, who by act of Parliament is the proper authority to grant Inams, will be issued on application. This should not be done till the new Deeds are ready.

23. Difficulties may arise where the Title Deeds have passed into the hand of third parties; but I make little doubt that all will be only too glad to perfect their titles; and if they do not choose to apply, it is their own fault. Government will at any rate have done all in its power to rectify its mistake.

24. If this course be decided on, I should propose to substitute for the present forms a legal form, in the shape of a release of the reversionary interest of the Queen in the Inam, which would not be longer than the forms at present used.

25. This form would apply to all cases; those in which Title Deeds have already been issued, as well as those in which they have yet to be issued.

26. I should scarcely like to introduce so totally different a form of Deed, if Government determines to refer the matter Home, for a considerable time must elapse before an Act would be passed, if an Act were conceded; and the wide difference between the new and old form of Title Deeds would be sure to attract attention, and, unexplained, probably excite much suspicion and alarm.

27. I should, in such a case, propose to adhere as closely as possible to existing forms, simply introducing the words "acting on behalf of the Secretary of State" after the introduction, and omitting all allusion to "land." The old form makes an improper use of the word "freehold," which the framers appear to have thought meant "held free of tax, &c.," but I should not for the same reason strike it out, as it is applicable in its legal sense—an estate *at least* for life to Inams—which are incorporeal hereditaments, as well as to land itself.

28. In any case an order must be issued by His Excellency the Governor in Council empowering the Inam Commissioner to execute the Title Deeds in whatever form they may be issued.

29. If the new Title Deeds adhere to the old forms as closely as possible, *they* would have to be re-called, and fresh Title Deeds issued in their stead, if Parliament should refuse to interfere; for then they would have to be assimilated to the forms to be issued to the old Title Deed holders; or again there would be two different forms existing for one and the same species of property.

30. If new Title Deeds are to be issued to the old Title Deed holders at once, the lately passed Inam Act will be a dead letter. I have, therefore, advised that a request for suspension of action respecting it should be telegraphed to the Supreme Government, and have, at your request, drawn up this statement of my views for the consideration of His Excellency the Governor in Council.

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ORDER THEREON, No. 2354.

UNDER the circumstances brought to notice in the foregoing letter, and in consideration of the very strong and decided opinion which is expressed by the Advocate General as to the course which the Government should adopt in order to remedy the additional defect which has been discovered in the Inam Title Deeds, the Right Hon'ble the Governor in Council resolves to re-issue these documents in a new and legal form.

2. The re-call of the Deeds already issued, even if it could be successfully effected, which is questionable, would perhaps lead to alarm and misconception; and the Government are of opinion that the grant of supplemental Deeds in the proper form would meet all requirements.

3. The Advocate General will accordingly be requested to prepare, in communication with the Inam Commissioner and the Government Solicitor, and to submit, for the approval of Government, a form of Title Deed which will serve as a supplemental document in those cases in which Title Deeds have already been issued, and which will form a competent title where no document has yet been granted.

4. When the form has been approved, the Inam Commissioner will at once set about the preparation of the new Deeds, district by district, and when those appertaining to any district are complete, the requisite notification will be issued to the Inamdars, titles will be granted to those who have not yet obtained them, and supplemental documents to all who produce the corresponding original Deeds, to which the supplemental Deeds will then be attached.

5. These Proceedings will be reported to the Government of India, with the request that no further steps may be taken in regard to the Inam Titles Bill, as the course now ordered will render unnecessary any enactment of the kind.

R. A. DALYELL,
*Acting Secy. to Govt., Fort St. George.*

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No. 434, dated Simla, the 30th October 1868.

From—A. P. HOWELL, Esq., Offg. Secy. to the Govt. of India, Home Dept.,
To—The Secretary to the Government of Fort Saint George.

I AM directed to acknowledge the receipt of your letter No. 2532, dated the 2nd instant, with its enclosure, containing the opinion of the Advocate General at Madras as to the invalidity of the Inam Title Deeds, and the orders of His Excellency the Governor in Council as to the course to be adopted.

2. In reply, I am to observe that, although there is much to be said in favor of the view of the subject which is held by Mr. Norton, still the Government of India is advised that the question turns upon a certain peculiarity of expression in the provisions of Statute 22 and 23 Vic., Cap. 41, and that a different construction from that which the learned Advocate General deems to be the proper one may possibly be placed on those provisions.

3. Under this view, and looking to the distrust and suspicion which the re-issue of the Title Deeds in a new and altered form would undoubtedly occasion in the minds of the vast number of persons, probably between one and two millions, whose interests are affected by the 400,000 documents already issued, the Government of India is clearly of opinion that the question of the validity or otherwise of these instruments, as tested by the Act of Parliament quoted, should be referred for the opinion of the Law Officers of the Crown in England. The papers on the subject will accordingly be forwarded to the Secretary of State, with a recommendation to this effect.

4. I am to add that no further steps will be taken in respect of the Inam Title Deeds Bill, which has already been passed by the Madras Legislature, and referred for the assent of the Governor General; but it is requested that all action may be suspended by the Government of Madras as to the re-issue of the Title Deeds till the reply of the Secretary of State has been received.

51

# No. 18 OF 1868.

## GOVERNMENT OF INDIA.

# HOME DEPARTMENT.

### LEGISLATIVE.

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TO THE RIGHT HON'BLE
SIR STAFFORD H. NORTHCOTE, BART.,
*Her Majesty's Secretary of State for India.*

SIMLA, *the 5th November* 1868.

SIR,

WE transmit herewith a copy of correspondence* with the Government of Fort St. George, from which you will perceive that it is the opinion of the learned Advocate General of that Presidency that the Inam Title Deeds already issued, and which purport to be executed by the Inam Commissioner on behalf of the Governor in Council, must necessarily be held by the Courts of law to be invalid in consequence of the non-observance of the provisions of the Statute 22 and 23 Victoria, Cap. 41, under which these documents should have been executed on behalf of Her Majesty's Secretary of State for India, either by the Governor in Council, or by his order.

* From Government of Fort Saint George, No. 173, dated 27th May 1868, and enclosures.
Telegram from Government of Fort Saint George, received 1st July 1868.
From Government of Fort Saint George, No. 2532, dated 2nd October 1868, and enclosures.
To Government of Fort Saint George, No. 434, dated 30th October 1868.

2. Although, as we have observed in our reply to the Madras Government, dated the 30th ultimo, there is much to be said in favor of the view of the subject which is held by Mr. Norton, still we apprehend that the question of the validity or otherwise of the Title Deeds turns upon a certain peculiarity of expression in the provisions of the Statute above-mentioned, and that a different construction from that which he deems to be the proper one, may possibly be placed on those provisions.

3. We shall feel obliged by your submitting the point for the consideration of the Law Officers of the Crown in England, and advising us of the result at your earliest convenience, as we have requested the Madras Government to suspend all action as to the re-issue of the Title Deeds till we hear from you in reply.

We have the honor to be,
SIR,
Your most obedient and humble Servants,

JOHN LAWRENCE.
W. R. MANSFIELD.
G. N. TAYLOR.
H. S. MAINE.
JOHN STRACHEY.
R. TEMPLE.
H. W. NORMAN.

*No.*

1868.

GOVERNMENT OF INDIA.

# HOME DEPARTMENT.

LEGISLATIVE.

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*No.* 18, *dated 5th November* 1868.

Copy.

*Letter to the Right Hon'ble the Secretary of State for India.*

*Forwards, for the consideration of the Law Officers of the Crown, copy of correspondence relating to an opinion expressed by the Advocate General of Madras, as to the invalidity of the Inam Title Deeds already issued in that Presidency, owing to the non-observance of the provisions of Act* 22 *and* 23 *Vic., Cap.* 41, *under which they should have been executed on behalf of Her Majesty's Secretary of State for India, either by the Governor in Council, or by his order.*

From the Right Hon'ble the DUKE OF ARGYLL, K.T., Her Majesty's Secretary of State for India, to His Excellency the Right Hon'ble the Governor General of India in Council,—No. 4, dated India Office, London, the 11th February 1869.

THE Despatch of your Excellency's predecessor in Council, dated 5th November (No. 18 of 1868), relative to the objection taken by the Advocate General at Madras to the validity of the Inam Title Deeds, executed and issued by the Inam Commissioner on behalf of the Governor in Council at that Presidency, has been considered by me in Council.

2. In reply, I forward herewith the opinion* of the Attorney and Solicitor General, the Queen's Advocate, and Mr. Forsyth, which sustains the objection raised by Mr. Norton. I desire that this opinion may be communicated to the Government of Madras with an intimation that I propose to apply to Parliament for a declaratory Act legalizing the previous proceedings of that Government on the subject under discussion. This course will render it unnecessary for His Excellency the Governor in Council at Madras to withdraw the Inam Title Deeds which have already been issued.

* Dated 6th January 1869.

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*Instructions on behalf of the Secretary of State for India in Council.*

YOU are requested to perfuse the accompanying Despatch from the Government in India, and its enclosures, relative to the validity of certain Inam Title Deeds issued in the Presidency of Madras, which it will be seen is called in question by Mr. Norton, the Advocate General of that Presidency, with reference to which your opinion is now requested.

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*Opinion.*

WE are of opinion that the objection taken by the Advocate General of Madras is well founded. The preamble of 22 and 23 Vic., c. 41, after reciting that "it has been considered" that the Local Governments in India cannot "execute such contracts and assurances in India on behalf of the Secretary of State in Council as before the commencement of the said Act (21 and 22 Vic., c. 106), they were respectively competent to enter into and execute on behalf of the East India Company," and that doubts had arisen as to the proper mode of execution of contracts entered into by the Secretary of State in Council, proceeds to pass a remedial and enabling measure. Power to execute contracts, assurances, &c., is vested in the various Local Government Officers, &c., by Section 1, and the mode in which they are to exercise such powers is defined by Section 2. The question does not seem to us to be exactly whether "may" is permissive or obligatory. "May" in Section 2 is an *enabling* word, and points out the means by which, and by which alone, the enabling operation stated by the preamble to be desirable can be effected. The statutory enactment is based on the assumption that, unless the permission given be used, the validity desired will not be attained. As the conditions imposed by Section 2 have not been fulfilled, the Title Deeds in question derive no validity under the Act.

It might be contended that the opinion stated in the preamble was ill founded. But we think the plain language of 21 and 22 Vic., Cap. 106, Sections 39 and 40, shows that it was well founded. We are therefore of opinion that the Title Deeds as executed are invalid.

R. P. COLLIER.
J. D. COLERIDGE.
TRAVERS TWISS.
WILLIAM FORSYTH.

TEMPLE;
*The 6th January* 1869.

(True Copies)
Charles Fiddleston
Offg. Under Secy: to the Govt of India.

Rev.e 1753 Leg
Rec.d Dec.r 15th 1753.

Revenue 1869 Sept.r

A.o 1753.

From
The Offg Under Secy
to the Govt. of Jordia

Dated 18th. May.
Rec.d 28th. May 1869.

Forwarding papers
relative to the invalidity
of certain Loan
Title Deeds executed
by the Loan Com.a
of Madras.

W.m 15th S.

Recorded, with reference
to S.C. under date 28th April
1869 No. 1148

2d June 1869