No. 111. Read the following letter from E. BARCLAY, Esq., Acting Government Solicitor, Madras, to the Hon. W. HUDLESTON, Chief Secretary to Government, Ootacamund, dated Madras, 27th August 1873, No. 530 :—

I HAVE the honour to acknowledge receipt of the order of Government, dated 11th August 1873, No. 827, Revenue Department, requesting the opinion of the Advocate-General and the Government Pleader relative to liability of fields entered in putta of one ryot but sold by him to another to attachment and sale for arrears of revenue due by the former.

2. I submitted the matter for the consideration of the Advocate-General and the Government Pleader, and I now forward herewith a copy of their joint-opinion.

OPINION.

WE think that, independently of Regulation XXVI. of 1802, the transfer of ryotwary land, which has not been recognized on behalf of Government by the corresponding change of name in the putta and register, can have no effect in diminishing the security which Government has upon the land for revenue due by the transferer at the time of transfer, or becoming due subsequently; and this both by the very nature of the tenure of such lands and by the express provision of Act II. of 1864, which declares (Section 2) that "the land, the buildings upon it, and its products, shall be regarded as the security of the public revenue." The only saleable right in ryotwary lands, which has ever been recognized by Government, is a right subject to the realization of the public revenue, and the permission to transfer has always been subject to the condition that the revenue was not affected by such transfer. This is obviously an absolute, necessary incident of the tenure of land liable to land-tax, and we believe that it has always prevailed in this country under all Governments, and that the regulations in so limiting by express provisions the transfer of land were only expressing in the form of written law,—a principle already well recognized by long-established usage.

2. But we are also of opinion that there is no foundation for the view which seems to have been at one time expressed by the late Sadr Court, that Regulation XXVI. of 1802 does not apply to ryotwary lands. The contrary view was certainly taken by the High Court in the case reported at page 134 of the 3rd volume of the reports. Neither can we see anything in the language of the regulation to so limit it as was supposed by the Sadr Court. The regulation in terms applies to all lands paying revenue to Government, and we do not think that the fact noticed by the Board, that it was thought necessary to legislate for the purpose of removing a doubt as to the applicability of one of its Sections to lands not permanently settled, can be regarded as supporting the view that the regulation is confined in its scope to permanently settled lands. This was done probably "*ex abundanti cautela*" in consequence of the very ruling of the Sadr Court, which, we think, was erroneous. If the regulation was intended to apply only to lands of the same nature as those the subject of Regulation XXV. of 1802, it is difficult to see why the provision requiring registry of transfers was repeated in the later regulation.

3. Neither do we think that there is anything inconsistent with the above view in the wording of Section 39 of Madras Act II. of 1864. Until a transfer is recognized by the Government, the right of the transferor in the land, as against the Government, remain unaffected by the transfer. He is still the only person whom the Government recognize as having any right or property in the land, and therefore the declaration under Section 39, that the purchaser succeeds to all his rights and property in the land, is, in effect, merely a declaration that the purchaser takes the only right or title which Government has ever recognized. That he does take such a title is clear from the rest of the Act. Section 35 shows that a person, other than the defaulter, claiming an interest in the land before sale can only have that interest recognized by paying the arrears; and Sections 38, 40, and 42 show that the certificate of sale confers an absolute title, free from incumbrances. It would perhaps be better to alter the wording of the forms of notice and certificate of sale so as to express that the sale is an absolute sale of the land itself, and not merely of the right, title, and interest of the defaulter therein.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

26th August 1873.

(Signed) J. W. HANDLEY,
Government Pleader.

No. 112. ORDER THEREON, [illegible] October 1873, No. 1,104.

Land Revenue, No. 7.

COMMUNICATED to the Board of Revenue, whose attention is requested to the alterations suggested by the Advocate-General and Government Pleader in the forms of Notice and Certificate of sale.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Government Solicitor.

29-9-11

Vide No. 4015 of 1873 from Board.

Govt. of {1873} Madras.

REVENUE.

THE BOARD OF REVENUE,

&c., &c., &c.

Dated October 14th.

Recd. *Encl.*

G. O., 14th October 1873, No. 1,104.

OCTOBER.

Nos. 111-112.

Fields entered in Putta of one Ryot b sold by him to another.—Communicating to t Board of Revenue opinion of the Advocate-Gener and the Government Pleader relative to the liab lity of — to attachment and sale for arrears revenue due by the former, and requesting the attention to the alterations suggested by th Advocate-General and Government Pleader in th forms of Notice and Certificate of sale.