M. R. O. 1—77,000—8-6-37.

(1) Number of pages 2

(2) Date of repair 17. 1. 64.

(3) Initials of the Reference

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1405 (261-262) Press ~~Mas.~~ S.C.

Dated 29. 8. 1863.

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 29th August 1863.

No. 261. Read the following letter from E. C. BAYLEY, Esq., Secretary to the Government of India; to A. J. ARBUTHNOT, Esq., Chief Secretary to the Government of Fort Saint George, dated Fort William, the 8th August 1863, No. 4,968.

Home Department.

I am directed to acknowledge the receipt of your letter, No. 810, dated 27th May last, submitting for the consideration of the Government of India, with the opinion of the Advocate General, a communication from the Administrator General at Madras, in which that Officer complained of the Accountant General at Calcutta having refused to recognize certain Letters of Administration granted by the High Court at Madras, which had been sent to Calcutta for registry, on the ground that they did not bear the stamp of four Rupees required by Clause 12, Schedule B, Act X of 1862.

2. In reply, I am desired to state that on receipt of your letter under acknowledgment the Advocate General at this Presidency was requested to submit his views on the point. The accompanying copy of that Officer's opinion will shew the Government of Madras that he considers "the Accountant General at Calcutta was justified in requiring Letters of Administration granted "at Madras to bear a stamp before registering them." The President in Council concurs in the opinion of the Advocate General of Bengal that there is no escaping from the language of Section 30 of Act X of 1862, which there is nothing apparently in the two subsequent Statutes cited in your second paragraph to override. The Advocate General of Madras assumes that Letters of Administration being released from stamp are released for all purposes; but the effect of the Law, as read by His Honor in Council, is that they are only released for *judicial purposes* in Courts established by Royal Charter, or in Presidency Town Small Cause Courts. The office of the Accountant General at Calcutta does not fall under any exception which renders it competent to receive or record an unstamped document.

3. As to the intention of the Legislature, the President in Council has little doubt that, in framing Article 12, Schedule B of Act X of 1862, the object contemplated was the imposition of a stamp duty of four Rupees upon all Probates or Letters of Administration by whatever Court granted, anything in Section 30 of the Act notwithstanding. The inclusion, however, of Article 12 in Schedule B, instead of in Schedule A, appears to have been an error, the amendment of which will obtain due consideration in the Viceroy's Council when assembled for legislative purposes at a future time.

4. With reference to the suggestion contained in paragraph 4 of your letter, I am directed to state that the matter has been referred to the Financial Department of this Government for consideration and orders.

From J. GRAHAM, Esq., Officiating Advocate General; to J. W. S. WYLLIE, Esq., Under Secretary to the Government of India, Home Department, dated Calcutta, the 26th June 1863.

In reply to your office Memorandum, No. 3,830, dated 18th instant, with enclosure, I have the honor to state that in my opinion, as the Law stands, the Accountant General at Calcutta was justified in requiring Letters of Administration granted at Madras to bear a stamp before registering them, but that there is an anomaly in the Law on the subject as pointed out in the correspondence enclosed.

Under Section 30 of Act X of 1862 the only exemption from stamps of documents classed under Schedule B, was in proceedings in Courts of Justice, established by Royal Charter, or the Presidency Small Cause Courts. Subsequently to the Act, the Courts established by Charter were abolished, and others were established by Charters. To meet this change, the Legislature, by Act XX of 1862, kept up, as a temporary measure, (still in force) the former exemption in regard to the business which corresponded to that in the old jurisdiction of the Supreme Court, but excluded the exemption in regard to the Appellate business which should come from sources

other than the original Civil jurisdiction. But I do not read any of the Acts as affirming the exemption to the extent of the *limits* of the *local* jurisdiction of the Supreme Court, or of the present High Court in its original Civil jurisdiction, but the exemption extends only to *proceedings* in those Courts.

The question then, is, whether unstamped Letters of Administration granted at Madras can *be received or recorded* (Section 30 of Act X of 1862) in the Calcutta Accountant General's Office; and, with deference to the opinion of the Advocate General of Madras, I think the words of the Act are express that they cannot, whatever consequences may result.

Letters of Administration granted by the High Court of one Presidency, do not confer a representative title in the Administrator in the other Presidiences, but an Administrator at Madras clearly may make a title to another person by endorsement there of a negociable instrument, so as to enable him to sue in the Court here. (See Mr. Justice Story on the Conflict of Laws, p.p. 864, 588.) The Madras Administrator could not himself sue in the Court here without obtaining Letters of Administration in the Bengal High Court, but his transferee stands on a different footing, and may demand payment of the interest on the Government Notes without any prior registration of his title here. Moreover, in default of payment, he might sue the Government in this Court, and, if necessary to show his title, might put in, as evidence, the unstamped Madras Letters of Administration.

But it is for the convenience of Government to have these Letters of Administration granted by other Presidency High Courts registered, and as registration cannot be compelled as against the person claiming under them, (who probably would decline to affix a stamp) it would seem desirable to alter the Law, and either admit of such documents to be recorded without a stamp, or to do away with the particular exemption.

There seems no adequate reason for the exemption of Probates and Letters of Administration, which in reason stand on a very different footing to Law proceedings in suits, and might properly be comprised in Schedule A. They are, moreover, a class of instruments which can afford to pay stamp duty.

The enclosure with your letter is herewith returned.

(True Copy.)

(Signed) J. W. S. WYLLIE,
Under Secretary to the Government of India.

No. 262. ORDER THEREON, 29th August 1863, No. 1,405.

Communicated to the Administrator General and to the Acting Advocate General.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMoorty.