M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT**

G.O. No. 810 Press ~~Mis.~~

219-221

Dated 27.5.1863-19 .

6/7

Not to be folded or roughly handled

8/10/63

Proceedings of the Madras Government, Judicial Department,
27th May 1863.

Read the following papers:—

No. 219. From JOHN MILLER, Esq., Administrator General; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated 15th May 1863, No. 1,146.

I have the honor to bring to the notice of Government the following circumstances, relative to a requirement of the Accountant General of Bengal, that I should have the Letters of Administration granted to me in my official capacity stamped under Section XXX of Act X of 1862, and Clause 12 of Schedule B of that Act.

2. On the 27th day of October 1862, Letters of Administration to the Estate of the late Mr. Uriel Pohle of Madras, were granted to me as Administrator General by the High Court of Madras, in pursuance of which I collected and made over to Lieutenant Pohle a considerable amount in Government Securities.

3. Lieutenant Pohle lately left Madras for Calcutta, taking with him the Government Securities I endorsed over to him, and deposited same with the Bank of Bengal.

4. On the 15th April last, I received a letter from Lieutenant Pohle complaining that he could not draw the interest on the Government Securities in consequence of the Letters of Administration granted to me not having been sent to Calcutta for registry in the books of the Accountant General of that Presidency, and of the Bank of Bengal, and complaining of the inconvenience to which he was subjected.

5. I thereupon addressed the Secretary of the Bank of Bengal, and forwarded the original Letters of Administration, with a request that the necessary registrations might be made, and the original letters returned to me as quickly as possible.

6. I have this day received an answer from the Secretary of the Bank of Bengal returning the Letters of Administration, and informing me that the Accountant General of Bengal declines to recognize them because they do not bear a stamp of four Rupees under the provisions of Clause 12, Schedule B of Act X of 1862.

7. I am of opinion that it is not necessary that Probates or Letters of Administration granted by the High Court should bear a stamp of four Rupees under Section XXX of Act X of 1862, and Clause XII of Schedule B of that Act. It would indeed be a strange thing to hold, that I could sue the Government for the interest due on their securities and recover same from them in the High Court on the production of an unstamped Probate or Letters of Administration; but that I should be unable to recover that interest by a simple application to their Accountant General and Treasurer.

8. Assuming, however, that I am wrong in my view of Section XXX of Act X of 1862, I submit that the operation of that Section has been suspended till the 1st of January 1864. It was first suspended by Sections 1 and 12 of Act XX of 1862, till the 1st January 1863, and subsequently Act XXIV of 1862 suspended the operation of Section XXX of Act X of 1862, till the 1st Jannary 1864. I do not therefore consider it necessary to put Estates to which I am Administrator to the expense of this stamp, until at all events I have submitted the matter for the consideration of Government.

9. It has never been the practice in Madras to stamp either Letters of Administration or Probates granted by the late Supreme Court or by the High Court, and any such requirements now, particularly to Probates and Administrations already granted, will work great inconvenience, and be productive of much injury to individuals and to the public, and I have, therefore, deemed it right to bring the subject to the notice of Government, and I shall be obliged by your obtaining for me their early orders for my guidance.

Referred to the Advocate General for his opinion.

FORT SAINT GEORGE,
18th May 1863.

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

No. 220. From JOHN ROBERT BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 22nd May 1863, No. 301.

1. I have the honor to acknowledge the order noted in the margin, relative to the operation of the Indian Stamp Laws on Probates and Letters of Administration granted by the High Court at Madras, and the necessity for registration at Calcutta and elsewhere of Letters of Administration granted at Madras and already registered at Madras.

Dated 18th May 1863, and endorsed on letter from the Administrator General of Madras to Government of 15th idem, No. 1,146.

2. I submitted this matter for the consideration of the Advocate General, and subsequently conferred with him thereon.

3. I now forward a copy of his opinion, and return the order above noted.

4. I likewise submit for the information of Government a copy of the Advocate General's opinion of the 22nd January 1863, and of the letter from the Acting Accountant General to the Acting Government Solicitor upon which that opinion was founded.

COPY—OPINION.

I have already advised, under date 23rd January 1863, upon a reference from the Acting Accountant General, Fort Saint George, that Probate and Letters of Administration granted by the High Court, are *not*, in my opinion, liable, under Clause 12, Schedule B of Act X of 1862, to a stamp of four Rupees.

2. Clause 12 of Schedule B, as well as the rest of the Schedule is governed, as its very heading shows, by Section XXX, the first line of which *excludes* "Courts of Justice established by Royal Charter;" and even were this not so, and supposing that Section XXX could include the High Courts, Sections 1 and 2 of Act XX of 1862 suspend the operation of Section XXX of Act X of 1862 till 1st January 1863; and Act XXIV of 1862 further suspends it till 1st January 1864.

3. I cannot think that the Accountant General of Bengal can have consulted the Advocate General on this point. If he has not, I think the Supreme Government should be requested to decide whether a public Officer in his position shall be permitted to cause such grave inconvenience to public creditors, as he has occasioned in this case, by putting his own construction on a Legislative Act without consulting the Law Officers of Government.

4. I think the Supreme Government should also be requested to decide whether one of its Financial Officers is at liberty, of his own mere will and pleasure, to establish a practice, not authorized by any law that I am aware of, entailing so much delay and inconvenience both upon public Officers and private individuals, as does his requisition, that all Probates and Letters of Administration granted by all other High Courts in India shall be transmitted to him, to be registered by himself, before he will acknowledge them—notwithstanding their having been duly registered, as soon as granted, by the Accountant General of the Presidency whose High Court granted them.

5. This does seem the very essence of redtapism; and in England would probably be answered by bringing an action against Government—to which I cannot see that Government would have any defence.

6. Surely now that the Financial Department is now so entirely amalgamated throughout British India, the least that might be expected, with a due regard to public convenience, is that one office should advise another of a Registry of Probate duly made in the former. If a Probate is to be sent to Bengal, from Madras, under such circumstances it must also be sent to Bombay, and the North West Provinces. The risk of such important documents being lost or injured by

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27th May 1863.

wet during such transmission, is as serious as the transmission itself appears to me unnecessary and annoying.

(Signed) T. SYDNEY SMYTH,
Advocate General.

22nd May 1863.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

From J. L. LUSHINGTON, Esq., Acting Accountant General; to JOHN MILLER, Esq., Acting Government Solicitor, dated Fort Saint George, 16th January 1863, No. 589.

Bond Department.

I have the honor to request that you will be good enough to obtain the opinion of the Advocate General as to whether Probates and Letters of Administration granted by Her Majesty's High Court of Judicature at Madras should bear an Indian stamp of four Rupees under Act X of 1862 or not. The enactment under Section 12 of Schedule B annexed to the Stamp Act appears to bear on the point under reference.

This reference becomes necessary as the Administrator General has sent several Letters of Administration granted on unstamped paper.

COPY—OPINION.

I was at first of opinion that under Section XXX of Act X of 1862, and paragraph 12 of Schedule B, Probates and Letters of Administration do require a four Rupee stamp, before they can be used in any Government Office, or Court of Justice, except in the High Court and Court of Small Causes in Madras, where they may be given in evidence without it; but that under Section II of the Act it is not obligatory to have them originally executed on stamped paper, but it had escaped my attention that Act XXIV of 1862 (published here on the 9th instant only) continues in force till the 1st January 1864, the provisions of Act XX of 1862, by the 1st and 12th Sections of which the operation of Section XXX of Act X of 1862 was suspended till the 1st January 1863.

At present, therefore, no stamp is required by virtue of Act X of 1862 on any Probate or Letters of Administration.

(Signed) T. SYDNEY SMYTH,
Advocate General.

22nd January 1863.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 221. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 27th May 1863, No. 810.

I am directed to submit for the consideration of the Honorable the President in Council the annexed copy of a letter, under date the 15th instant, from the Administrator General at Madras, with reference to the refusal of the Accountant General at Calcutta to recognize certain Letters of Administration granted to him by the High Court, and which had been sent by him to Calcutta for registry, on the ground that they do not bear a stamp of four Rupees under the provisions of Clause 12, Schedule B, Act X of 1862.

2. Mr. Miller's letter having been referred to the Advocate General, that Officer has given it as his opinion that "Letters of Administration granted by the High Court are not liable under Clause 12, Schedule B of Act X of 1862 to a stamp of four Rupees." The Clause in question, the Advocate General observes, is governed, "as its very heading shows, by Section XXX, the first line of which excludes "Courts of Justice established by Royal Charter;" and even were this not so, and supposing that Section XXX could include the High Courts, Sections I and II of Act XX of 1862 suspend the operation of Section XXX of Act X of 1862 till the 1st January 1863; and Act XXIV of 1862 further suspends it till 1st January 1864."

Proceedings of the Madras Government, Judicial Department,
27th May 1863.

3. It would thus appear that the Accountant General at Calcutta has acted on a mistaken view of the law in the matter to which the Administrator General refers, and I am accordingly directed to request that he may be instructed to register the documents in question without further delay.

4. I am also to suggest for the consideration of the Government of India, whether in such cases the registry of the Letters of Administration by the Accountant General of the Presidency in which they were granted should not be sufficient in order to their recognition by the Accountant General or Accountant in another Presidency, notice of the registry being given by the one Financial Officer to the other.

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

Exd. T. McMootry.

dispd. 28
By S. Mootta"

Judicial Department.

No. 810

To

The Secretary to the Government
of India.

Home Department,

Sir,

I am directed to submit
for the consideration of the Hono
:able the President in
Council the annexed
copy of a letter under
date the 15th Instant from
the Administrator Gener
at Madras with referen
to the refusal of the
Accountant General
at Calcutta to recogniz
certain letters of admini
stration granted [illegible]
by the High Court
and which had been
sent by him to Calcu
for registry, on the grou
that they do not bear

a Stamp of four Rupees under the provisions of Clause 12 Schedule B Act X of 1862:

2. Mr. Miller's letter having been referred to the Advocate General that officer has given it as his opinion that "Letters of Administration granted by the High Court are not liable under Clause 12 Schedule B of act X of 1862 to a Stamp of four Rupees" The Clause in question the Advocate General observes is governed. "as its very heading shows by Section XXX the first line of which excludes "Courts of Justice established by Royal Charter" and even were this not so and supposing that Section XXX could include the High Courts

Sections

Sections I and II of Act XX of 1862 suspend the operation of Section XXX of Act X of 1862 till the 1st January 1863 and Act XXIV of 1862 further suspends it till 1st January 1864."

3. It would thus appear that the Accountant General at Calcutta has acted on a mistaken view of the law in the matter to which the Administrator General refers and I am accordingly directed to request that he may be instructed to register the documents in question without further delay.

4. I am also to suggest for the consideration of the Government of India whether in such cases the registry

of the letters of Administration by the Accountant General of the Presidency in which they were granted would not be sufficient in order to their recognition by the Accountant General or Accountant in another Presidency, notice of the registry being given by the Guardian one officer to the other.

Fort St George
24th May 1863

12 & 13 Vict c 96 s 4

15/2/52

Judl. 1863 Dept.

No. 870.

Secretary to the Govt
of India—

Received

Ft. St. 27 May 1863
Ft. St. 1851.

Submitting copy of a letter
from the Administrator Genl.
with reference to the refusal
of the Accountant General
at Calcutta to recognize
certain letters of Administration granted to the
Administrator General by
the Madras High Court.—

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