

Judicial (1895) Department.

ORDINARY MS.

G.O., No: 347

Dated 15th Feb. 1895.

INDEXED.

[Despatch Abstract.]

STAMP CASE

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

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JUDICIAL DEPARTMENT.

1895.
Board of Revenue
(Separate Revenue),
MADRAS.

Order 15 July 1895 No 347
mis

Recorded.

Printed February 11th.

Proceedings, 19th January 1895, No. 21.



Communicating to the Collector of Madura the decision of the High Court on a stamp case referred under section 46 of Act I of 1879, and requesting him to refund the duty and penalty levied in the case.

14/2/95

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PROCEEDINGS OF THE BOARD OF REVENUE
(SEPARATE REVENUE).

READ—the following paper :—

To

THE HON'BLE THE MEMBERS OF THE BOARD OF REVENUE,
MADRAS.

Petition respectfully submitted by Mr.
R. Fischer, Madura, under Section 42 of
the Indian Stamp Act (I of 1879).

RESPECTFULLY SHEWETH,

That petitioner became the purchaser for Rs. 4,105 of the immoveable property sold on the 24th July 1893 in execution of the decree in original suit No. 67 of 1892, Subordinate Court of Madura (East).

2. That on the 30th October 1893, petitioner's pleader, Mr. R. Streenivasa Iyengar, purchased a stamp paper of the value of Rs. 45 and presented it to the said Court for engrossing the sale certificate thereon; that the sale certificate was accordingly engrossed and given to petitioner on or about the 11th October 1893, with the seal and signature of the Court.

3. That petitioner re-presented it in Court, along with the usual petition praying for delivery of the property comprised therein, on the 13th October 1893; that the said stamp was thereupon punched out by mistake by the Court officers on the said date, as would appear from the endorsement of the Court on the top of the stamp itself.

4. That petitioner got back the sale certificate from the Court after the delivery was effected, and presented it for registration in the Madura District Registrar's office on the 24th November 1893; that it was then impounded and sent by that officer to the Deputy Collector, Madura division, on the ground that it was not duly stamped; that as per the order of the Deputy Collector enclosed herein, petitioner has paid the stamp duty of Rs. 45 and a penalty of Rs. 5, as the endorsement of the Deputy Collector on the back of the certificate will show.

5. That petitioner is not the executant of the document as the Deputy Collector thinks, but the executant, in the present case, was the Subordinate Judge of Madura (East).

6. That petitioner begs to submit that the Deputy Collector has misconstrued the provisions of section 37 of the Stamp Act and held that the document was not duly stamped, and has also failed to notice that the document was "duly stamped" as per the definition of the expression contained in the Act, at the time when the instrument was executed on the 11th October 1893, while as a matter of fact the stamp was punched out by mistake by the Court officers only on the 13th October 1893, i.e., two days after the execution of the document.

Petitioner therefore prays that the Honorable Board will be pleased to order the said sum of Rs. 50 collected from him to be refunded.

Enclosures.

1. Original sale certificate issued by the Sub-Court of Madura (East) in original suit No. 67 of 1892.
2. Authenticated copy of the Deputy Collector's order.

(Signed) R. FISCHER.

24th April 1894.

READ—again Proceedings of the Board of Revenue (Separate Revenue), dated 5th May 1894, No. 1123, Routine:—

ABSTRACT.—Requesting Mr. R. Fischer, Madura, to forward an eight-anna Court-fee label to be affixed to a certain enclosure to his petition appealing against the levy of stamp duty and penalty on a certain document.

READ—also letter from R. FISCHER, Esq., Madura, dated 14th May 1894, No. 53.

ABSTRACT.—Forwarding an eight-anna-Court fee label to be affixed to the copy of the Madura Deputy Collector's order.

Reference on the above, dated 21st May 1894.

The petition will be referred to the Collector of Madura for remarks.

(Signed) D. D. MURDOCH,
Secretary.

To the Collector of Madura, with the petition
and two enclosures in original (to be returned).

READ—also the following letter from L. C. MILLER, Esq., Acting Collector of Madura, to the Secretary to the Commissioner of Salt, Abkari and Separate Revenue, dated Madura, 11th June 1894, Ref. on C. No. 216-S.R.:—

Adverting to Board's Reference No. 580, dated 21st May 1894, on the petition of Mr. R. Fischer, I have the honour to report that the District Registrar of Madura, before whom the document in question was presented for registration, impounded it and forwarded it to the Deputy Collector, Madura division, for adjudication of stamp duty, as the deed had been engrossed on a punched stamp paper; and that the Deputy Collector referred the matter to the Collector for instructions, doubting whether the document should be considered duly stamped or not.

2. My predecessor thereupon asked the Sub-Judge, in whose Court the certificate was said to have been drawn up, whether the stamp paper in question was punched out before or after the deed was drawn up; and received a reply (Sub-Judge's letter No. 707, dated 18th November 1893) "that the stamp therein referred to was by mistake punched out before the drawing up of the sale certificate."

3. He then treated the stamp as a spoiled one, and ordered that the penalty and deficient stamp duty should be levied, as the document had to be considered as unstamped. Mr. Fischer contests this ruling, and I think there is a good deal to be said on his side. I do not find anything in the law (Stamp Act or Government of India rules) which invalidates a stamp paper with a hole in it, even if that hole be through the Queen's head. The office memorandum on which Mr. Turner's order was passed refers to section 51 (a), but that section which gives the right of receiving a refund of the value of a spoiled unused stamp does not prohibit the use of the stamp if the owner prefers to use it. The stamp in question is not so obliterated that its value cannot be ascertained: had Mr. Fischer made the hole in it by piercing it with a paper-holder to fasten it to a file of other papers, it would not have been held to have been defaced, but as the hole was made by a round punch on the part containing the Queen's head, and as that is the usual and, in the case of Court fees, legally prescribed method of cancellation, the stamp was regarded as cancelled.

4. But assuming that the stamp was *prima facie* a cancelled stamp, the law does not lay it down anywhere that cancellation is conclusively proved by punching. It was open to Mr. Fischer to prove, as he has proved beyond doubt, that the stamp was punched by a mistake of an officer of the Sub-Judge's Court and was not a "cancelled" stamp.

5. I think, therefore, that the document, as presented to the Registrar, was duly stamped according to law. The petition, together with its two enclosures, are herewith returned.

6. The equity of the case is clear. Mr. Fischer has been made to pay double duty, besides a penalty, entirely without fault on his part. He is probably wrong when he says that the deed was drawn up before the stamp was punched; the Sub-Judge's letter is against him then; but even so, the certificate was drawn up and executed by the Court; the stamp was in Court and Mr. Fischer had no opportunity of asking for a refund of its value as a spoiled stamp before it was executed. Surely he was entitled to believe that the Court would not have executed a certificate that was not duly stamped, and could then in any case have obtained a refund only under section 51 (d) (7) after procuring the execution of a fresh certificate.

7. Mr. Fischer is certainly entitled to a refund of his penalty, and if, as I think, the document was illegally held to be unstamped, to the refund of the second duty paid by him.

LETTER—from the Secretary to the Board of Revenue (Separate Revenue), to the Registrar of the High Court, Appellate Side, Madras, dated 28th June 1894, Mis. No. 2819.

SIR,—I am directed by the Board of Revenue to refer the following case, under section 46 of the Indian Stamp Act, for the decision of the Honourable the Judges of the High Court.

2. On 24th July 1893, Mr. R. Fischer, of Madura, purchased certain immoveable property sold in execution of the decree in original suit No. 67 of 1892 of the Subordinate Court, Madura (East), and on 30th October 1893 he presented (through his pleader) a stamp paper of the value of Rs. 45 to that Court for engrossing the sale certificate thereon. The stamp was inadvertently punched by some officer of the Court; the instrument was afterwards drawn upon it and delivered to Mr. Fischer. The Deputy Collector of Madura, under the orders of the then Collector, treating the stamp as a spoiled one, ruled that the certificate of sale was not duly stamped and levied a stamp duty of Rs. 45 and a penalty of Rs. 5. Against this order Mr. Fischer now appeals to the Board.

3. The present Collector of Madura contends that there is nothing in the Stamp Act or the rules passed thereunder which invalidates a stamp paper with a hole in it, and that it is nowhere laid down that cancellation is conclusively proved by punching. He holds that the stamp in the present case was not a cancelled one, as it was punched by mistake, and that the document was duly stamped, and he considers that the penalty and the duty levied from Mr. Fischer should be refunded to him.

4. The Board agrees with the Collector and is prepared to remit the penalty of Rs. 5, but has no power to revise the Deputy Collector's decision so far as the stamp duty is concerned. The case is therefore referred for the orders of the High Court. After the decision of the High Court is received, the Board will proceed to dispose of the case conformably with that decision.

5. The records of the case are herewith forwarded with the request that they may be returned when no longer required.

I have, &c.,

(Signed) D. D. MURDOCH,
Secretary.

To the Registrar of the High Court, Appellate Side,
with the petition with two enclosures and the Collector's report thereon.
Copy to the Collector of Madura.

READ—also the following paper:—

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the 17th day of December 1894.

PRESENT :

The Honorable Sir ARTHUR J. H. COLLINS, *Kt.*, *Chief Justice.*

The Honorable Justice Sir T. MUTHUSAMI AIYAR, *K.C.I.E.*

The Honorable Mr. Justice PARKER.

Referred Case No. 11 of 1894.

Case referred for the decision of the High Court under section 46 of Act I of 1879 by the Board of Revenue (Separate Revenue) in their letter, dated 28th June 1894, Mis. No. 2819.

This case coming on for hearing after service of notice; upon perusing the letter of the Board of Revenue (Separate Revenue), dated 28th June 1894, No. 2819, the Court recorded the following

Opinion.

The reason for making an allowance for a spoiled stamp under section 51 is that the stamp has become unfit for use; but in this case the stamp was not rendered unfit for use by punching, for the Court itself engrossed upon the paper the deed for which the stamped paper was presented. We are of opinion that the Deputy Collector was in error in treating the document as unstamped.

By the Court,

(Signed) A. T. FORBES,
Deputy Registrar, Appellate Side.

To the Secretary to the Commissioner of
Salt, Abkari and Separate Revenue, with record.

RESOLUTION—dated 19th January 1895, No. 21.

The decision of the High Court will be communicated to the Collector of Madura, who will refund the duty, Rs. 45, and penalty, Rs. 5, levied in this case.

(True Copies and Extract.)

(Signed) D. D. MURDOCH,
Secretary.

(True Copy.) *[Signature]*
Assistant Secretary.

To the Collector of Madura, with two enclosures,
to be returned to Mr. R. Fischer.

„ „ Accountant-General.

Copy to the other Collectors.

„ „ Superintendent of Stamps.

„ „ Inspector-General of Registration.

„ „ Chief Secretary to Government, Judicial Department.

„ to all District Judges.

When given for copying _____
When copied _____ } 189.
When examined _____
When signed _____

READ AGAIN G.O., No.
189.

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

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