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MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 113 — Press / Mis.

224-225

Dated 6—1— 1861.

Not to be folded or roughly handled

No. 224. Read the following letter from W. GREY, Esq., Secretary to the Government of India, Home Department, to A. D. ROBERTSON, Esq., Secretary to the Government of Bombay, dated Fort William, 3rd December 1860, No. 2,718 :—

SIR,

1. With reference to the correspondence marginally noted, I am desired to forward the accompanying copy of an opinion given by the Advocate General of Bengal from which it will be perceived that the Letters of Hypothecation which usually accompany document Bills are held to come certainly under Article 41 of Schedule A of the Stamp Act, as acknowledgments granted for loans or advances made on the deposit of goods, and that it is held to be doubtful whether they come under Article 1 as agreements relating to matters capable of valuation.

Telegram from the Government of Bombay, dated 24th September 1860.
To Government of Bombay, No. 2,141, *dated 29th September* 1860.
From Government of Bombay, No. 3,743, *dated 17th October* 1860, *and enclosure.*

2. The President in Council concurs with Mr. Ritchie in considering it unadvisable to endeavour to bring these documents under Article 1, and desires that they may be stamped as acknowledgments under Article 41. Mr. Ritchie's opinion can be made known to the Commercial community, either by communicating it to the Chamber of Commerce, or otherwise as may seem best.

No. 2,719.

Copy of the above letter, and of the papers noted in the margin, forwarded to the Government of Fort Saint George, for information and guidance.

Extract paragraph 2 of letter from the Government of Bombay, No. 3,743, *dated* 17*th October* 1860, *and enclosure.*
Opinion of the Advocate Genl. dated 7th Nov. 1860.

(Signed) W. GREY,
Secretary to the Government of India.

Extract of letter from the Acting Secretary to the Government of Bombay, to the Secretary to the Government of India, No. 3,743, *dated* 17*th October* 1860.

Paragraph 2.—I am instructed to annex a transcript of the correspondence noted in the margin, regarding the stamping of letters of hypothecation.

Letter from the Agent Oriental Bank Corporation, dated 8th October 1860, *with accompaniment.*
Reply to No. 3,688, *dated* 12*th October* 1860.

From J. SKINNER, Esq., Agent to the Oriental Bank Corporation, to A. D. ROBERTSON, Esq., Secretary to Government in the Revenue and Financial Departments, Bombay, No. 8,916, dated 8th October 1860.

SIR,

We have the honor to submit to you a letter of hypothecation which usually accompanies document bills purchased by this Corporation. When this letter is used, we also receive a Bill of Lading and a Policy of Insurance both duly stamped, and the Bill of Exchange to which it refers will be fully stamped when the Act comes into operation.

We have the honor to request you will inform us, if under these circumstances, this letter of hypothecation will require to be stamped, and if a stamp is necessary, what value it ought to express.

To

THE ORIENTAL BANK CORPORATION.

Bombay 1860.

Having this day negociated to you Bills of Exchange drawn by on of the particulars of which are noted at foot; and having at the same time, handed to you as collateral securities for the due payment of the said Bills, the Bill of Lading and Shipping Documents of the several goods, also stated at foot; agreement is understood to be as follows:—

authorize the Oriental Bank Corporation, or any Manager or Agent thereof (but not so as to make it imperative), to insure the above Goods from sea risk, including loss by capture, and also from loss by fire on shore; in case shall omit to do so immediately after notice from you to that effect; and to add the premiums and expenses of such Insurances to the amount chargeable to in respect of the said Bills, and to take their recourse against the said Goods, or against for their reimbursement; and also to sell any portion of the said Goods which may be necessary for payment of Freight; and the said Corporation are to take such measures generally, and to make such charges for commission, and to be accountable in such manner, but not further or otherwise as in ordinary cases between a merchant and his correspondent.

also hereby authorize the Corporation and the holders of the above Bills for the time being, to take conditional acceptances to all or any of such Bills to the effect that, on payment thereof at maturity, the abovementioned Bills of Lading and Shipping Documents shall be delivered to the Drawees or Acceptors thereof; and such authorization on part shall be taken to extend to cases of acceptance for honor.

further authorize the Oriental Bank Corporation, or any Manager or Agent thereof, on default being made in acceptance on presentment, or in payment at maturity, of any of the Bills, to sell the said Goods, or a competent part thereof, and to apply the net proceeds (after deducting usual commission and charges) in payment of such Bills, with re-exchange and charges; [the balance, if any, to be placed against any other of Bills which may at the time be in the hands of the said Corporation,] and subject thereto, to be accounted for to the proper parties. In case, the net proceeds of such Goods shall be insufficient to pay the amount of any such dishonored Bills, with re-exchange and charges, authorize the Oriental Bank Corporation, or the holders thereof for the time being, [to draw on us for the deficiency, and engage to honor such Drafts on presentment,] or to pay the said Corporation the amount in London.

further authorize the said Corporation, or the holders of the said Bills for the time being, at any time before their maturity, to accept payment from the Drawees or Acceptors thereof, if required so to do, and on payment, to deliver the said Bills of Lading and Shipping Documents to such Drawees or Acceptors; and in that event the said Corporation, or the holders of said Bills, are to allow a discount thereon for the time they may have to run, at the Bank of England minimum rate of the day, if taken up in London; or, if in India, Ceylon, China, Mauritius or Australia, at the current rate of discount of the day on Government Acceptances in India, Ceylon, China, Mauritius or Australia, as the case may be.

Lastly, it is mutually agreed that the delivery or said collateral securities to your Corporation shall not prejudice your rights on said Bills in case of dishonor, nor shall any recourse taken

Proceedings of the Madras Government, Revenue Department,
16th January 1861.

thereon affect the title of the Corporation to said securities to the extent of liability to your Corporation as above.

Bills and Documents above referred to.

Particulars of Bills.			Particulars of Goods.	
Date.	Amount.	Drawee.	Bill of Lading.	Name of Ship.

From A. D. ROBERTSON, Esq., Acting Secretary to the Government of Bombay, to JOHN SKINNER, Esq., Agent Oriental Bank Corporation, Bombay, No. 3,688, dated 12th October 1860.

Sir,

I am instructed to acknowledge the receipt of your letter, No. 8,916, dated the 8th instant, with accompaniment, and to inform you, in reply, that, letters of hypothecation clearly belong to the category of documents enumerated under item No. 1, of Schedule A, of the Stamp Act, and partake of the nature of an agreement relating to matters capable of valuation. They should, therefore, bear the same stamp as for a Bond for the payment of the value stated.

True Copy.)

(Signed) H. U. BROWNE,
Under Secretary to the Government of India.

Opinion of the Advocate General, dated 7th November 1860.

I incline to think that the letters of Hypothecation in question, in respect of the two provisions mentioned in paragraph 2, may be treated as agreements relating to matters capable of valuation so as to be chargeable so far as regards those provisions under Article 1 with the same duty as Bonds. But the point is not quite free from doubt. Documents similar in some respects relating to the deposit of goods and defining the terms of the deposit, or the mode of disposing of the goods, have been held in England not to be liable to an agreement stamp, on the ground that they do not constitute the Memorandum of an agreement within the strict legal meaning of the term, but rather a mere collateral acknowledgment of a transaction past or complete in itself, such as a pledge or hypothecation, for which the English Acts do not provide.*

*1. *Baldwin vs. Alsiger*, 13 *M. and W.* 365.
2. *Sibres vs. Tripp*, 15 *M. and W.* 23.
3. *Blackwell vs. Macnaghten*, 12. *B.*, 27.
4. *Dr. Porquet vs. Page*, 15 *Q. B.* 1,073.
5. *Attenborough vs. Commissioner of Inland Revenue*, 11 *Exche.* 461.

2. But these instruments contain two special provisions which appear to me to render them chargeable as agreements under Article 1:—First, the clause empowering the Bank to apply the surplus proceeds of the goods to any other dishonored Bills which the Bank may hold of the same parties; and second, the clause agreeing to accept and pay at maturity any re-draft which may be drawn from England for any deficiency. These collateral provisions appear to go beyond those which the law itself implies as a consequence of the hypothecation of goods to meet a particular advance on Bills endorsed to a Bank, and as such they may be properly held to subject the document to an *ad valorem* agreement or Bond Stamp of an amount sufficient to cover any sum which the Bank may seek to recover under such stipulations.

3. Somewhat similar documents have also been held in England not to amount to assignments of goods; and in the present case it is clear that these letters cannot be treated as assignments of goods, as the property in the goods is not passed in any way by them, but by the endorsement of the Bill of Lading representing the goods.

Harris vs. Birch, 9 *M. and W.* 591.
Attenborough vs. Commissioner of Inland Revenue, 11 *Exche.* 461.

4. But I am clearly of opinion that these documents (whether the stipulations mentioned in paragraph 2 render them also agreements in regard to those matters or not) fall within Article 41, as acknowledgments granted for loans or advances made on the deposit of goods, and that if those two stipulations be omitted, the only stamp they will require will be the Promissory Note *ad valorem* Stamp imposed by that Article. Article 41 meets the exceptional cases of pledge and hypothecation above referred to, for which the English Stamp Act was not provided, and, I have no doubt, applies to such a case as the present note of hypothecation. Though I do not think that according to the English decisions the word "goods" in this article, or goods, wares, or merchandize in Article 1, can be extended to Bills of Exchange so as to bring an acknowledgment on the deposit of such Bills alone within Article 41. I think that the deposit and pledge of Bills of Lading duly endorsed amounts to a deposit of the goods thereby represented within the meaning of this Article.

5. I further incline to think that if the provisions referred to in paragraph 2 be omitted, the document in question may (where the Bills of Exchange have been duly stamped after the 31st December, 1860) be treated under Section 40 as a mortgage acting merely as a collateral security to some other transaction, in which an instrument requiring a Stamp has been executed, for I think that a Bill of Exchange duly stamped to which the document in question is a collateral security, is such an instrument. As long as the Bills of Exchange do not bear a stamp of higher value than 8 Rupees, the stamp on the document of hypothecation will be the same whether unpassed under Article 41 or Article 40. But where the stamp on the Bills of Exchange exceeds Rupees 8, that sum will be the maximum value of the stamp under Section 40. And it will of course be of importance for the Bank, or the parties dealing with it, to bring the document within that Section rather than within Section 41.

6. In conclusion, I would strongly advise the Government not to endeavour to bring documents of this description within the range of the higher agreement or Bond Stamp, wherever there is fair ground for contending that they fall within Article 40 or 41, and admit of a collateral or a Bill of Exchange stamp, for if the higher rate of stamp be imposed, it may probably be considered worth while for many Banks or Individuals to dispense with such collateral documents, and to trust to the Bills of Exchange and Bills of Lading which being endorsed to the lenders give them virtually all the security they require. It is not necessary, in order to complete the legal title of the lenders, that they should take any memorandum in writing of the terms of the hypothecation, and although it may be more convenient to them to have such a Memorandum, and may be worth their while to exact a moderate stamp (such as that on a Promissory Note or a collateral instrument), it may not be worth their while to impose on their constituents the additional burden of an Agreement or Bond Stamp, at the risk of driving them to negotiate the Bills or shipping documents with persons who are willing to dispense with a written Memorandum altogether.

(Signed) W. RITCHIE,
Advocate General.

(True Copy.)

(Signed) H. U. BROWNE,
Under Secretary to the Government of India.

No. 225. ORDER THEREON, 16th January 1861, No. 113.

Ordered to be communicated to the Board of Revenue and to the Chamber of Commerce and to be laid on the Editor's table.

(Signed) J. D. BOURDILLON,
Secretary to Government.

No. 2918

FROM

W. GREY, ESQUIRE,
Secy. to the Govt. of India,

TO

A. D. ROBERTSON, ESQUIRE,
Secy. to the Govt of Bombay.

SIR,

Dated Fort William, the 3rd December, 1860.

HOME DEPT. WITH reference to the correspondence marginally noted, I am desired to forward the accompanying copy of an opinion given by the Advocate General of Bengal from which it will be perceived that the Letters of Hypothecation which usually accompany document Bills are held to come certainly under Article 41 of Schedule A of the Stamp Act, as acknowledgments granted for loans or advances made on the deposit of goods, and that it is held to be doubtful whether they come under Article I as agreements relating to matters capable of valuation.

Telegram from the Government of Bombay, dated 24th September, 1860.
To Government of Bombay, No. 2141, dated 29th September, 1860.
From Government of Bombay, No. 3743, dated 17th October, 1860, and enclosure.

2. The President in Council concurs with Mr. Ritchie in considering it unadvisable to endeavour to bring these documents under Article 1, and desires that they may be stamped as acknowledgments under Article 41. Mr. Ritchie's opinion can be made known to the Commercial Community, either by communicating it to the Chamber of Commerce, or otherwise as may seem best.

I have the honor to be,
SIR,
Your most obedient servant,

W. Grey

Secy. to the Govt. of India.

No. 2719

COPY of the above letter, and of the papers noted in the margin, forwarded to the Govt of Fort St. George for information and guidance.

Extract paragraph 2 of letter from the Government of Bombay, No. 3743, dated 17th October, 1860, and enclosure.
Opinion of the Advocate General, dated 17th Nov,

Secy. to the Govt. of India.

(5)

Revenue 1860 Depart.
Pro: of Govt for January 16.

No. 2929

From the Secretary to
the Govt. of India-

Dated 3rd Decr. 1860.
Rec'd 13th
2 Encls.

Furnish Copy of a
letter to the Govt of
Bombay desiring that
Letters of Hypothecation
may be Stamped as
Acknowledgments
under Article 41 of
the Schedule A of the
Stamp Act-

With an order
No. 113. 16th January.

No. 113.

Ordered to be com-
municated to the Board
of Revenue and to the
Chamber of Commerce
and to be laid on the Editor's
table

Fort St. Geo. 16th Jany 1861.

13 Copies.

To The Bd of Rev. Pay Rs. 18

1 a Chamber of Commerce Rs
1 a Trade Association Rs

No. 224 & 225.

C. 20th Decr 26