M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 349	Press ~~Mis.~~
180-181	
Dated 14 — 2 — 1861.	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
14th February 1861.

No. 180. Read the following Proceedings of the Sudder Court, dated 28th January 1861, No. 5:—

Read Proceedings of the Madras Government, dated 24th December 1860, concurring in the opinion of the Board of Revenue, expressed upon a reference from the Civil Judge of Cuddalore, that receipts given by parties for sums paid to them by the Courts, are not exempt from Stamp duty under the general exemption at the end of Schedule A Act XXXVI of 1860, because the Court in such cases is not itself a party to the transaction, but merely an agent of the real party.

Read also Proceedings of the Board of Revenue, dated 9th January, embodying the above Proceedings of Government, for circulation "to all Collectors and Judges."

1. The Judges of the Sudder Court observe that upon a reference from the Civil Judge of Chittoor, in October last, they held that receipts in such cases need not be upon Stamps.

2. They have now given the subject further consideration, and see no reason to alter their opinion.

3. That the Courts may be considered "parties" to transactions conducted before them, is apparent from the phraseology of the general exemption in question; and, seeing that it is only to deeds for sales made in satisfaction of decrees or orders of Court that this exemption does not extend, as explained in the note, the necessary inference is that in all other branches of the business of the Courts the exemption is to prevail.

4. The Judges regret this collision of opinion between themselves and the Government. It has arisen, they think, from its having been overlooked that they are the interpreters of the law within the proper range of their functions, the limits of which are described in the Extract from the despatch of the late Honorable Court of Directors of the 11th April 1848, communicated to the Court by the Government on the 3rd July following. The interpretation they gave was required of the Judges to guide one of the judicatories subordinate to them. The Civil Judge of Cuddalore made the mistake of addressing the Board of Revenue with whom he had no official relations; and hence has arisen the conflict of opinion which has occurred.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

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Ordered that that the following letter be despatched.

No. 181. From J. D. BOURDILLON, Esq., Secretary to the Government of Fort Saint George, to the Secretary to the Government of India, Financial Department, dated 14th February 1861, No. 349.

SIR,

1. I am directed by the Honorable the Governor in Council to forward for the decision of the Government of India a question relating to the interpretation of the Stamp Act, and on which there exists a difference of opinion between this Government and the Sudder Adálat.

2. The "Calcutta Gazette" of the 12th September 1860, page 1,953, contains a ruling worded as follows:—"Under the General Exemption at the end of Schedule A of Act XXXVI of 1860, "all Bills of Exchange drawn by Public Officers in their public capacity, whether obtained for "public or private purposes, are exempted from Stamp duty; and in like manner, receipts or "discharges given by private parties or Public Officers in their public capacity on behalf of the "Government, are exempted from Stamp duty, the Government or the Public Officer in his "public capacity being in both instances regarded as a party to the instrument."

3. With reference to this ruling, the Civil Judge of Cuddalore applied to the Board of Revenue for their opinion whether "receipts given by Vakíls and other parties to the Courts "for moneys collected and paid to them in execution of judgments and other processes" were exempt from the operation of the Stamp Act.

Obtain

Proceedings of the Madras Government, Revenue Department, 14th February 1861.

4. The Board were* of opinion that the exemption did not extend to such documents as those mentioned by the Civil Judge, because in them that Officer is really the Agent of the parties concerned, who, if they collected the money themselves, would certainly have to give Stamped receipts. The Board referred to the "Note" appended to the "General Exemption" at the end of Schedule A of the Stamp Act, as confirmatory of their view that Government was not a "party" to such transactions. By that Note sales for the recovery of arrears of Revenue are declared liable to Stamp duty. These sales are from first to last conducted by Government Officers for the realization of Government claims, and if Collectors so acting are not "parties" within the scope of the Act, much less could Judges be held to be so, in such transactions as those referred to. The Board, however, considered, that receipts for fees, &c., paid to Vakíls and others for services rendered to Government did not require Stamps, as Government are clearly parties in such cases. In these views this Government concurred.

* *16th November* 1860, *No.* 5,341.

5. The Order embodying that Resolution† having since come under the observation of the Court of Sudder Adálat, has been objected to by that body, on the ground that the phraseology of the "General Exemption" in question shows that the Courts may be considered "parties" to transactions conducted before them; and that as it is only to deeds for sales made in satisfaction of decrees or orders of Court that this exemption does not extend, as explained in the "Note," the necessary inference is, that in all other branches of the business of the Courts, the exemption is to prevail.

† *24th December* 1860, *No.* 2,488.

6. It becomes necessary, therefore, to have an authoritative ruling on the point, and for this I am now instructed to ask.

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

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R. D.

No. 349

To

The Secretary to the Govt. of India
Financial Department

Sir,

1. I am directed by the Honorable the Governor in Council to forward for the decision of the Govt. of India a question relating to the interpretation of the Stamp Act, and one which there exists a difference of opinion between this Govt. and the Sadr. Adálat.

2. The Calcutta Gazette of the 12 Sept. 60 Page 1953 contains a ruling worded as follows. "Under the general exemp- "tion at the end of schedule "A of Act 36 of 1860, all Bills "of exchange drawn by or "Public Officers in their "public capacity, whether

obtained

"obtained for public or pri:
"vate purposes, are exempted
"from Stamp duty; and in
"like manner, receipts or
"discharges given by private
"parties or public Officers
"in their public capacity on
"behalf of the Govt., are exempted
"from Stamp duty. The Govt.
"or the Public officer in his
"public capacity being in both
"instances regarded as a party
"to the instrument."

3. With reference to this ruling the Civil Judge of Cuddalore applied to the Bd. of Revenue for their opinion whether "receipts given by "Vakils and other parties to "the Courts for monies collected "and paid to them in execution "of judgments and other processes" were exempt from the oper:
:ation of the Stamp Act.

4. The Board were of opinion that the exemption did

16th Nov. 1860 No. 531

did not extend to such documents as those mentioned by the Civil Judge, because in them that officer is really the agent of the parties con:
:cerned, who, if they collected the money themselves, would certainly have to give stamped receipts. The Board referred to the "Note" appended to the "General Exemption" at the end of Schedule 1 of the Stamp Act, as confirmatory of their view that Government was not a "Party" to such trans:
:actions. By that note sales for the recovery of arrears of Revenue are declared liable to Stamp duty. These sales are from first to last conducted by Govt. Officers for the realization of Govt. claims, and if Collectors so acting are not "parties" within the scope of the Act, much less could Judges be held to

be

be so, in such transactions as those referred to. The Board, however, considered, that receipts for fees &c. paid to Vakils and others for services rendered to Govern: ment did not require Stamps, as Government are clearly parties in such cases. In these views this Govt concurred -

5. The order embodying these ~~recommendations~~ Resolution ~~which the Govt. concurred~~, having since come × 21st Dec. 1860 & 21/1888. under the observation of the Court of Sudr. Adalat, have been objected to by that body, on the ground that the Phraseology of the "General Exemption" in question shews that the Courts may be considered "parties" to transactions conducted before them; and that as it is only to deeds for sales made in satisfaction of decrees or orders of Court that

that this exemption does not extend, as explained in the "Note," the necessary in: ference is, that in all other branches of the business of the Courts, the exemption is to prevail.

6. It becomes necessary, therefore, to have an authoritative ruling on the point - and for this Govt are instructed to ask.

CJW

Fort St. Geo. 14 Feb. 1861

J. D. H.

Jud. 1 – 2
2 - 1 - 1844
" 11 – 12
18 - 8 - 46
" 16 – 17
4 - 7 - 48
405 406
24 - 12 - 60

No 181

To The Govt of India

Question relating to the in-
terpretation of the Stamp act

Revenue 1861 Depart
No. 7 Govt for February
No 342

To the Secretary to the
Govt of India.
Dated 7th February 61.

Forwarding for
decision a question relating
to the interpretation of the
Stamp Act.

Rec'd 11th Feb 61 No 2224

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