M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Secret DEPARTMENT.

G.O. No. 570 Press Mis.

206-207

Dated 12-3-1861.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 12th March 1861.

No. 206. Read the following letter from F. WALTHEW, Esq., Secretary to the Income Tax Commission, to J. D. BOURDILLON, Esq., Secretary to Government, Revenue Department, dated Madras, 7th March 1861, No. 45 :—

SIR,

1. I am directed by the Commissioners for the Income Tax in the Town of Madras, to request that you will move Government to obtain the opinion of their Law Officer on the following point, regarding which a difference of opinion exists among the Members of the Board.

2. The point at issue relates to the provisions contained in Clause I, Section 56 of Act XXXII of 1860, and it is whether by this Section the Commissioners are empowered to enhance a surcharge when in the course of hearing the appeal against it; they find from information elicited that it ought to be higher than it has been fixed.

3. Section 47, Part IV of the Act prescribes that if the Assessor considers any return to be understated, he shall state in his abstract the sum at which he shall consider the person ought to be assessed.

4. Sections 52, 53 and 54, describe the course to be followed by the Commissioners in deciding upon such returns, and authorize them to surcharge in such sums as they shall after deliberation, think fit.

5. If the party surcharged fails to appear according to the notice sent to him under Section 55, the surcharge stands good, provided no fraud, for which penalties are prescribed in Section 204, Part XIX, is charged and established.

6. The question on which the Board seek a legal opinion, hinges on the interpretation of Clause 1, Section 56, by which the Commissioners are empowered (when the appellant appears) to "modify," "abate" or "confirm" the surcharge, or to postpone the case for further hearing, after which final hearing they are (it is laid down) to decide the amount in which the person ought to be surcharged, and to assess him accordingly.

7. The doubt which has arisen is, whether the Commissioners may, in deciding the amount at which a party is to be surcharged, under the foregoing rule, legally raise the original surcharge, if, from circumstances which come to light during the hearing of the appeal, they consider it ought to be higher, no fraud however having been proved.

8. The majority of the Commissioners are unwilling to inflict the penalties provided in the Act for fraud except in very flagrant cases, but they are not of opinion that the interests of the Government should remain unguarded. If, therefore, at that hearing which affords the appellant an opportunity of obtaining the reduction of the surcharge, the fact that his Income or Profits had been under-estimated by the Commissioners when fixing the amount of the original surcharge, should happen to be elicited, then the Commissioners consider that the surcharge should be increased, or in other words that the assessment should be made on the actual income or profits ascertained at the final hearing.

No. 207. ORDER THEREON, 12th March 1861, No. 570.

Referred for the report of the Advocate General on the point at issue.

(Signed) C. G. MASTER,

Deputy Secretary to Government.

consider

to decide the amount in which the person
ought to be surcharged, and to apply him
accordingly.—

7 The doubt which has arisen is
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the amount at which a party is to be
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stances which come to light during the
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consider that the Surcharge should be increased,
or in other words that the Assessment should
be made on the actual income or profits
ascertained at the final hearing.

I have the honor to be
Sir,
Your Most Obedient Servant

Walthen.
Secretary