

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	5037	Press Mis.
Dated	31 June	19 1862

Not to be folded or roughly handled

28 January 1862.

Minute.

The President proposes
the following appointment

Mr J. F. H. to act
as Collector & Magistrate
of the District
of North And during
the absence of Mr
J. J. Robinson or
until further
orders.

Devisor

W. H.

W. H.

W. 37

Received 1862 Oct 24th
Pro: of Good Hope Society
Pp. 294.

Minute by the
Hon: the President

Oct 28th 1862
Received 31st 1862.

Appointing
Messrs. Dr. and Dr.
cut as Collectors
Magistrate of the
District of North Coast
during the absence
of Mr. J. O. Robinson:
-con or until further
order.

Alfred
Sagittas

W. 37.
Sagittas

John W. Lyons
31st May 1862

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.C. No. 37	Press ~~Mis.~~
73-74	
Dated 10-1-18 62.	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
10th January 1862.*

No. 73. Read the following Extract from the Proceedings of the Government of India, in the Financial Department, dated 14th December 1861, No. 14,581 :—

Extract from the Proceedings of the Government of Bombay, in the Revenue Department, No. 4,947, dated 14th November 1861.

Read the following papers :—

LETTER FROM MR. W. HART, OFFICIATING REVENUE COMMISSIONER, S. D., DATED 22ND MAY 1861, No. 866.

IN reply to a reference made to this Department by the Collector of Poona, as to whether or

Treasurers and Treasury Carcoons,	Tulattees,	as to whether or
Shroffs,	Record-Keepers,	not <i>Security</i>
Mamludars and Mahalkurries, and their Head	Farmers of Government Farms,	<i>Bonds</i> taken on
Carcoons,	Contractors to do work for Government,	account of the
Stamp Vendors,	Ryots receiving Taccavee advances.	

Officers and others mentioned in the margin require to be written on stamped paper, my predecessor, on the 28th February last, replied in the affirmative.

2. The Collector has represented that as the Security Bonds referred to are executed in favor of Government, and therefore come under the general exemption and rule at the end of Schedule A of the Stamp Act, the orders circulated with the Under-Secretary's memorandum, in the Revenue Department, No. 1,250, dated the 15th March last, render it unnecessary that such documents should be on stamped paper any more than receipts passed to Government.

3. I think that the Collector is clearly right so far as his application of the analogy between the two cases is concerned, but I submit the matter for the consideration of Government, as I perceive grounds for anticipating that as Act XXXVI. of 1860, Schedule A, 15, declares that Security Bonds taken by the Collector, or under his orders, are "to be charged as specified and prescribed by Schedule B," and as Schedule B requires that Security Bonds when furnished under special order of any Revenue Officers exercising Judicial powers shall be charged as petitions, a Court of Law in which the Collector might endeavour to enforce a forfeited Security Bond executed on unstamped paper might possibly regard it as invalid, and should such a miscarriage occur owing to my acting on my own view of this matter, which is opposed to that taken by my predecessor, I should be justly liable to censure for not having in the first place ascertained the opinion of Government, which I now beg you to obtain for me.

4. The 17th section of Act XXXVI. of 1860, declares that every provision contained in its Schedules shall have the same force as if it were contained in the body of the Act, but the provisions of the Schedules are drawn up with such inconceivable carelessness that they are in many instances irreconcilable, and in some unintelligible. As regards the present question, for instance, there is room for such doubts as the following:—If the general rule and exemption at the close of Schedule A exempt "writings of any kind" in which "any public officer may in a public capacity be a party," why should rule 15 of that Schedule specify Security Bonds taken by public officers, of course in their public capacity, among documents chargeable under Schedule B? It seems to me that, worded as Schedule A, 15, and the general rule and exemption at the end of the Schedule are, the latter is not so much an exemption as a stultification of the former, that is to say, if their framer intended that the documents named in A, 15, should be chargeable under Schedule B., and *if not*, their being named in A, 15, as so chargeable is quite as inconsistent.

5. But, however the rule and exemption at the end of Schedule A may be understood as affecting A, 15, I base, on considerations with which the former has no concern, my opinion that Security Bonds, such as those described in my first paragraph, do not require to be on stamped paper, for if Security Bonds taken by Collectors are, as stated in A, 15, only to be charged "as specified and prescribed in Schedule B," they can only be charged, according to the first rule of that Schedule, (which is the only part of it in which I can

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find such Security Bonds mentioned,) when taken by the Collector as a Revenue Officer "exercising Judicial powers," and if taken by the Collector in his administrative capacity, and not in the exercise of *Judicial* powers, I conceive that they do not come within the specification of chargeable documents. And, further, supposing that B, 1, were to be read as referring to Security Bonds taken by Collectors acting otherwise than in the exercise of Judicial powers, it could not even then make them chargeable otherwise than as "petitions," and petitions presented to Collectors are *exempt*, under the last exemption following Schedule B, 5, which declares that in the Presidencies of Madras and Bombay no petition to the Revenue authorities need be on stamped paper, excepting in suits brought in the Revenue Courts under Act XVI. of 1838.

6. On the whole, therefore, I am of opinion that the instructions issued from this office on the 28th of February, as described above in my first paragraph, should be annulled; but I hope to be favored with an expression of the opinion of Government on the subject, and would suggest that it might be useful to refer in the first place to the Sudder Adawlut, to ascertain if the Judges have yet had to make any ruling on the subject.

REFERENCE TO THE SOLICITOR TO GOVERNMENT, DATED 25TH MAY 1861, No. 2,489.

FORWARDED to the Solicitor to Government, who is requested to obtain the report of the Advocate General.

REPORT BY THE SOLICITOR TO GOVERNMENT, DATED 8TH AUGUST 1861, No. 450.

A COPY of the opinion of the Advocate General is annexed.

OPINION OF MR. M. R. WESTROPP, ACTING ADVOCATE GENERAL, DATED 8TH AUGUST 1861, No. 36.

I have read the letter of Mr. Hart, Revenue Commissioner, S. D., No. 866 of 1861, dated the 22nd May, addressed to Mr. Chief Secretary Robertson, and referred to me through the Solicitor to Government by the Under-Secretary's memorandum, No. 2,489 of 1861, dated 25th May.

At first sight Article No. 15 in Schedule A to Act XXXVI. of 1860, (the Stamp Act,) at least so far as it relates to Security Bonds, or other Obligations taken by the Collector, if not in other respects also, seems to be in direct conflict with the Note near the end of the same Schedule, which contains a general exemption from Stamp duty of Deeds, instruments and writings of any kind in which Government or any Board, Commission, Court, or Public Officer may, in a public capacity, be a party. On looking, however, at Article, No. 15, in Schedule A, it will be seen that the Stamp duty, leviable in respect of documents falling within that Article, is to be charged as specified and prescribed in Schedule B of the same Act. Referring to Article, No. 1, in Schedule, B, which is the only Article in that Schedule in which Security Bonds are mentioned, it will be observed that the only Security Bonds in revenue matters there mentioned are Security Bonds taken by any Revenue Officer *exercising Judicial powers*. A Court of Justice would be bound to construe every part of the Act in such a manner as, if possible, to give effect to each part, and, so far as such Court can, to avoid holding one part to be repugnant to another part of the same enactment. The only mode that I can perceive in which such repugnancy can be surmounted in the present case is that ably suggested by Mr. Hart, namely, that Article, No. 15, in Schedule A is controlled by Article, No. 1, in Schedule B, and that Security Bonds taken by or by order of Collectors, or other Revenue Officers when exercising their Judicial functions, are liable to Stamp duty, and that the Note of general exemption at the end of Schedule A exonerates all other Security Bonds, taken by Collectors or other Revenue Officers in their public capacity, from Stamp duty. This construction gives effect as well to Article, No. 15, in Schedule A, as also to the Note of general exemption at the end of that Schedule, and does not absolutely nullify either of them, and most probably fulfils the intention of the Legislature. It is impossible to say whether the Civil Courts

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10th January 1862.*

in the Mofussil will take this view of the Act. The Act ought to be more clearly expressed, and calls loudly for speedy amendment in this and other points.

There is a good deal of force in the observations of Mr. Hart in paragraph 5 of his letter, founded on Article 5 in Schedule B to the Act. His argument might, however, be regarded as too remote, and, for the reasons already stated, I do not think that it ought to be necessary to resort to that argument.

ORDERED, that copies of the above be forwarded for information and guidance to the Revenue Commissioner, N. D., the Revenue Commissioner, S. D., the Commissioner of Customs, Salt, and Opium, the Commissioner in Sind, all Collectors of Stamp Revenue, the Superintendent of Stamps, the Political Resident, Aden, and the Solicitor to Government; and that a copy be communicated to the Government of India.

FINANCIAL DEPARTMENT, FORT WILLIAM, THE 14TH DECEMBER 1861.
RESOLUTION.

THE Governor General in Council is of opinion that Security Bonds, such as those described in the 1st paragraph of the Proceedings of the Government of Bombay, No. 4,947, dated 14th November 1861, being writings in which a public officer is a party in his public capacity, fall within the general exemption rule at the end of Schedule A of Act XXXVI, of 1860, and do not require to be stamped.

His Excellency in Council agrees generally in the view taken of the case by the Acting Advocate General at Bombay, though His Excellency in Council does not think that there is so much difficulty as the Acting Advocate General seems to feel in reconciling the general exemption with Article 15 of Schedule A of the Act. That Article, consistent with the exemption and with Article I of Schedule B, clearly does not include the case of a Security Bond taken on behalf of Government, or for its sole benefit by the Collector not acting judicially but as representing Government.

His Excellency in Council agrees with the Acting Advocate General in thinking, that the Schedule to the Stamp Act is not so clear as it should be on this and on other points, and requires amendment in form as well as in substance. As the question of further amending the Stamp Act is shortly to come under the consideration of the Legislature, His Excellency in Council desires, in order to facilitate the passing of the Bill into Law, that all the local Governments be requested to report on the matter, suggesting any alterations in the Schedules which appear to them advisable after the experience they have had of the working of the original Act.

ORDERED, that a copy of the Resolution be sent to the Government of Bombay, for information and for the purpose indicated.

* Bengal.
Madras.
North West Provinces.
Punjab.

Ordered, also, that a copy of the Resolution and of the papers be sent to the other local Governments* for the purpose indicated.

Also copy to Mr. Harington, for information.

(A true Extract.)

(Signed) C. H. LUSHINGTON,
Secretary to the Government of India.

No. 74. ORDER THEREON, 10th January 1862, No. 37.

Forwarded to the Board of Revenue, who will furnish the required report as soon as possible after consulting the Chamber of Commerce and the Collectors.

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

Editor
table.

July 1862

N. 37

(A true Extract)

Wm. D. Smith

Secretary to the Government of India.

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Forwarded to the
Board of Revenue who
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sulting the Chamber
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the Collector.

Wm. D. Smith
10 January 1862.

To the Bd of Rev. Perf. 11

J. D. S.

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THE Governor General in Council is of opinion that Security Bonds, such as those described in the 1st paragraph of the Proceedings of the Government of Bombay, No. 4947, dated 14th November 1861, being writings in which a public officer is a party in his public capacity, fall within the general exemption rule at the end of Schedule A of Act XXXVI. of 1860, and do not require to be stamped.

HIS Excellency in Council agrees generally in the view taken of the case by the Acting Advocate General at Bombay, though HIS Excellency