M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1182 Press Mis.

1830—131

Dated 7— 7— 19 1824

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 7th July 1864.

No. 130. Read the following letter from E. H. LUSHINGTON, Esq., Secretary to the Government of India, Financial Department, with the Governor General, to the Secretary to the Government of Bombay, dated Simla the 21st May 1864, No. 288 :—

SIR,

In reply to your letter, No. 669 *a*, of the 24th February last, I am directed to state that the Advocate General, who has been consulted on the subject, concurs with the Solicitor to your Government in thinking documents of the kind described to be exempt from Stamp duty. The Government of India accordingly approves of the instructions issued to the Superintendent of Stamps.

Copy of the above correspondence to Governments of Bengal, Madras, North-Western Provinces, Punjab, and minor Administrations, for guidance.

(True Copy)

(Signed) THOMAS PEACHEY,

Principal Assistant Secretary to the Government of India.

No. 669*a*, dated 24th February 1864.

From A. D. ROBERTSON, Esq., Officiating Chief Secretary to the Government of Bombay, to E. H. LUSHINGTON, Esq., Secretary to Government of India, Financial Department.

1. I am directed by His Excellency the Governor in Council to forward herewith a copy of the papers, as per margin, relating to a reference made by Messrs. Sangster and Manisty, Solicitors of this place, to learn the value of the Stamp to be attached to certain documents, being contracts made for, or relating to, the sale of goods or merchandize.

Letter from the Superintendent of Stamps, No. 135, dated 5th February 1864, with accompaniments.
Report by the Solicitor to Government, No. 67, dated 10th February 1864.

2. The Superintendent of Stamps has been furnished with a copy of the report of the Solicitor to Government, and informed that he should be guided by the opinion therein expressed of the nature of the deed. And I am directed to request that you will have the goodness to inform this Government whether the Government of India approve of this decision.

No. 135, dated 5th February 1864.

From G. SCOTT, Esq., Superintendent of Stamps, Bombay, to the Honorable A. D. ROBERTSON, Officiating Chief Secretary to Government, Revenue Department.

1. I have the honor to submit for the opinion of Government an original letter from Messrs. Sangster and Manisty, with the two translations which accompanied it.

2. The documents, I consider, are not agreements or contracts made for or relating to the sale of any goods or merchandize, and, therefore, they do not come under the exemption at the end of Article 5 of Schedule A of Act X, of 1862, nor can they be taken for Promissory Notes as one of the essentials of a Promissory Note is that the payment of money must be absolute and not conditional, they can only be bonds or obligations for the payment of money, and as such they come under the provisions of Article 12 of Schedule A of the Act.

3. Documents similar to those now submitted are daily being executed in large numbers, and the point, thereof appears to be of sufficient importance to require an authoritative declaration as to the proper Stamp Duty to which such writings are liable.

Dated 28th January 1864.

From Messrs. SANGSTER and MANISTY, Solicitors, Bombay, to the Collector of Stamp Revenue, Bombay.

We have the honor to forward you herewith translations (made by one of the Translators in the high Court) of two documents.

The original of each bears an one Anna Adhesive Receipt Bill or Draft Stamp, and we have to submit for your determination—

1. Whether these documents are sufficiently stamped ?
2. If not, what Stamp should be impressed upon them ?
3. If your answer to question 1 be in the negative, upon what terms you will allow the proper Stamp to be impressed ?

Documents similar to the ones in question have lately been signed in large numbers in the Bazzar, and the impression amongst the natives is that they do not require any Stamp. They consider them agreements made for or relating to the sale of goods, and therefore exempt under the second exemption to Section 5 of Schedule A. Without doubt, the documents are agreements *relating* to the sale of goods, for they simply amount to this. B having bought Cotton from A, and wishing to sell the same quantity of Cotton to C instead of agreeing to deliver Cotton to C, which would put him to the trouble of receiving the Cotton from A and handing it to C, executes a document in the form in question, the effect of which is that C instead of receiving the Cotton he has purchased from B himself, receives it from A, and B having sold at a higher price than he bought at, C pays part of his purchase money to A, and the balance to B.

Of course the document contains promise by C to pay B this balance, but that does not cause to be any more a Promissory Note than the form of contract for the sale of goods is, for the ordinary form must contain a promise by the Vendor to deliver the goods, and a promise by the purchaser to pay the agreed price.

It will be observed that each of the documents in question bears an one Anna Stamp. There does not appear to be any reason for this except that in many of the bargins earnest money is paid, and then a Receipt Stamp is requisite, and owing to this, the natives have got into the habit of annexing the Stamp, and they very often do so even on the ordinary form of contract and where no earnest is paid.

If, however, you should be of opinion that the documents do require a Stamp, it appears a somewhat difficult matter to perceive what Stamp is the proper one.

Section I. in the Schedule provides a Rupee 1 Stamp for an agreement not being in the nature of a bond or obligation for payment of money, and as the documents in question are obligations for payment of money and not bonds, the Stamps provided by Section 10, for Promissory Notes or obligations for payment of money payable at any period not exceeding one year after date would seem to apply.

As to the terms upon which you will direct the proper Stamp to be impressed (if you think a Stamp is requisite). We think it appears clearly that the omission to use the proper Stamp did not arise from any intention to evade payment of the Stamp Duty or otherwise to defraud the Government, but simply because the parties were under the impression that no Stamp was requisite, and, therefore, we hope you will direct the proper Stamp to be impressed on payment of a sum sufficient to make up the proper amount of the Stamp Duty and a penalty, of treble such amount, under the provision of Clause 2 of Section XV.

(Translation of a Guzrati Agreement marked No. 22.)

To Th. (Thakar) Murarjee Bhimjee and "Company," written by Parsi Dadabhai Naorojee Beugali. To wit, 1 Agreement for Dholera Cotton, Candies 101, namely, Candies one hundred and one, which had been sold by Th. (Thakar) Banjee Narsi to you, of the rate of Rupees 495, namely, four hundred and ninety-five, bearing date the 12th of Bhadarva Sud S. (Samont) 1919, the day of the week, Thursday, the very same abovementioned agreement, has been purchased by me from you at the rate of Rupees 575, namely, five hundred and seventy-five. The amount of the "difference" between them, amounted to Rupees 8,080, at the rate of Rupees 80, namely, eighty per Candy. The amount of rebate Rupees 2824-5, at the rate of 3½ per cent. having been deducted, the balance amounted to $7,797-20, namely, seven thousand, seven hundred and ninety-seven and twenty cents, which are truly payable on the 3rd of Magsar Sud S. (Samont) 1920

Proceedings of the Madras Government, Revenue Department,
7th July 1864.

(13th December 1863,) and the risk and responsibility of every description in respect to Th. (Thakar) Bhanji Narsi aforesaid, are on my head; and the abovementioned money is truly payable to you, agreeably to the abovementioned time; and you are truly to give me your "Power" (of Attorney) for recovering from Th. (Thakar) Bhanji Narsi, the claim in respect to the abovementioned agreement. Through the brokers Sha Harjivan Jetha and "Company," this bargin having been made, this "receipt" for the amount of the "difference," has been given in writing to you. It shall truly be agreed to by me, and my heirs and representatives. Bombay S. (Samont) 1920, Kortak Sud, the 13th day of the week, Monday, the English date the 23rd November 1863.

(Signature written across an Anna Stamp as follows.)
Written by Dadabhai Naoroji Bengali (his) signature.

(Translation of a Guzrati Agreement marked No. 15.

To Th. (Thakar) Murarji Bhimji and "Company," written by Sha Jekisundas, Harkisundas. To wit, you have obtained from Th. (Thakar) Bhanji Narsi, 1 agreement, dated the 12* of Bhadarwa Sud S. (Samont) 1919, Thursday, for Candies 101 namely, of one hundred and one, Dholera Cotton of S. (Samont) 1919, (1862-63) after it is examined. That very agreement has been sold, by you to me. Out of the same, you have retained Candies 25, and Candies 76 have been purchased by me. Rupees 10,137, namely, ten thousand, one hundred and thirty-seven have been fixed as the amount of your profit on account thereof; and the risk (and liability of every description in respect to Th. (Thakar) Bhanji Narsi aforesaid are on my head; and the above sum on account of your profit, Rupees ten thousand, one hundred and thirty-seven clear is truly to be paid to you, on the 3rd of Magsar Sud S. (Samont) 1920 (the 13th December 1863); and you are truly to give (me) your "Power" (of Attorney) for the purpose of recovering (my) claim from Th. (Thakar) Bhanji Narsi, on account of the above agreement. Through the brokers Sha Harjivan Jetha and "Company," (this) sale having been effected, this "receipt" has been given in writing for the amount of your profit, which is truly agreed to S. (Samont) 1920 Kartak Sud, the 13th the day of the week, Monday, the English date the 23rd of November 1863.

(* 24th September 1863.)

(Signature, &c., written across an Anna Receipt Stamp as follow.)
Written by Jenkisundas Harkisundas. His signature. His own hand writing.

No. 57, dated 10th February 1864.

Report by the Solicitor to Government, Bombay.

1. I am of opinion that these documents are contracts made for, or relating to, the sale of goods or merchandize and exempt from Stamp Duty.

2. With reference to the 3rd paragraph of the letter from the Superintendent of Stamps, No. 135, suggesting an authoritative declaration as to the amount of Stamp Duty to which such documents are liable, I beg to suggest that as the duty of interpreting the laws is not within the province of Government, no authoritative or binding declaration can be made, and any declaration must be disregarded by a Court of Law in which the question is raised.

3. Under Sections 15 and 19 of Act 10 of 1862, Government is authorized to determine the amount of Stamp duty payable upon particular instruments and to Stamp the instruments accordingly, whereupon the particular instrument so stamped is to be deemed properly stamped, but unless an instrument is itself stamped under one of those Sections, the fact that it is stamped with the same amount of duty as, and is, in precisely similar terms to, an instrument which has been stamped under Sections 15 or 19 would be no proof that it was properly stamped, and the Court before which it was produced would have to determine aliunde whether it was properly stamped.

4. It must also be observed that the provisions of Sections 15 and 19 of Act 10 of 1862 do not apply to instruments on which duty is payable, and therefore even with regard to particular

instruments of that nature Government can pass no authoritative or binding declaration that they are free from duty.

5. An English Act, the 16 and 17 Vict., C. 59, has extended to the Commissioners of Inland Revenue the power in cases where they are of opinion that an instrument is not chargeable with Stamp Duty of impressing a particular stamp to signify the same, in addition to the power they previously had under the 13 and 14 Vict., C. 97, to assess the duty and stamp the instrument to signify that it was fully stamped.

6. The Indian Legislature has conferred powers analogous to those which exist in England under the 13 and 14 Vict., C. 97, but for some reason, not intelligible to me, has not thought fit to confer the extended power of adjudging instruments not to be chargeable with any duty.

7. If Government should adopt my opinion that the agreements, of which translations are annexed, are exempt from duty, the Superintendent of Stamps should be directed to inform Messrs. Sangster and Manisty, in reply to their letter, that he is advised that the documents forwarded by them, are within the exemption in favour of agreements made for or relating to the sale of goods.

No. 1,337, dated 11th March 1864.

Endorsed by Govt, of India, Finl. Dept.

Forwarded to the Solicitor to Government, for the opinion of the Advocate General, on the liability of documents of the kind in question to Stamp duty, and the value of the Stamp to be impressed.

No. 1,031, dated 28th April 1864.

From R. F STACK, Esq., Offg. Solicitor to Govt. to E. H. LUSHINGTON, Esq., Secy. to Govt. of India, Finl. Dept.

With reference to your office docket, No. 1,337, dated the 11th March last, I have the honor to forward herewith a copy of the Advocate General's *opinion, on the* question submitted by the Government of Bombay, as to the proper Stamp to be affixed upon certain documents, being contracts made for, or relating to, the sale of goods or merchandize.

2. The original papers received with your docket above referred to are returned herewith.

Opinion by T. H. COWIE Esq. Advocate General Fort William, dated 27th April 1864.

I have perused the two agreements, and am of opinion that they are agreements relating to the sale of goods, and therefore within the exemption. The report of the Solicitor to the Government of Bombay appears to me to contain an accurate statement of the law.

(True Copies)

(Signed THOMAS PEACHEY,

Principal Assistant Secretary to the Government of India.

No. 131.

Separate Revenue No. 31.

Customs.

ORDER THEREON, 7th July 1864. No. 1,182.

Ordered to be communicated to the Board of Revenue for their information and guidance.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

No. 288.

FROM E. H. LUSHINGTON, ESQUIRE,

SECRETARY TO THE GOVERNMENT OF INDIA,

FINANCIAL DEPARTMENT, WITH THE GOVERNOR GENERAL;

TO THE SECRETARY TO THE GOVERNMENT OF BOMBAY.

Simla, the 21st May 1864.

Financial Department.

SIR,

In reply to your letter, No. 669*a*, of the 24th February last, I am directed to state that the Advocate General, who has been consulted on the subject, concurs with the Solicitor to your Government in thinking documents of the kind described to be exempt from Stamp duty. The Government of India accordingly approves of the instructions issued to the Superintendent of Stamps.

I have the honor to be,

SIR,

Your most obedient servant,

E. H. LUSHINGTON,

Secy. to the Govt. of India, with the Govr. Genl.

Copy of the above correspondence to Governments of Bengal, Madras, North-Western Provinces, Punjab, and minor Administrations, for guidance.

(True Copy)

Principal Assistant Secretary to the Government India.

[Exd. N. R. Nundy.]

Enclosed the requested statement
Let me know if I can furnish more
information. —
Yours truly
Thomas M. Cleaver & Co
per Sulzbach